

Fill in this information to identify the case:	
Debtor 1	<u>Magnesium Corporation of America</u>
Debtor 2 (Spouse, if filing)	_____
United States Bankruptcy Court for the: <u>Southern District of New York</u>	
Case number	<u>01-14312 (MKV)</u>

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>United States of America (on behalf of United States Environmental Protection Agency)</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>U.S. Attorney's Office, SDNY</u> Name _____ <u>86 Chambers Street</u> Number _____ Street _____ <u>New York</u> <u>NY</u> <u>10007</u> City _____ State _____ ZIP Code _____ Contact phone <u>(212) 637-2674</u> Contact email <u>christine.poscablo@usdoj.gov</u>	Where should payments to the creditor be sent? (if different) Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact phone _____ Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>see attached</u> <div style="float: right; text-align: right;"> Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A). </div>
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>see attached</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Identify the property: <u>see attached</u>

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☐ No

☒ Yes. Check one:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ _____

☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☒ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ see attached

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date March 8, 2017

MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name	Ken Wangerud		
	First name	Middle name	Last name
Title	Remedial Project Manager, Superfund Remedial Program		
Company	United States Environmental Protection Agency		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	1595 Wynkoop Street		
	Number	Street	
	Denver	CO	80202
	City	State	ZIP Code
Contact phone	(303) 312-6703		Email wangerud.ken@epa.gov

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**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 7
MAGNESIUM CORPORATION OF AMERICA,)	
Debtor.)	Case No. 01-14312 (MKV)
)	Case No. 01-14311 (MKV)
In re:)	(Jointly Administered)
)	
RENCO METALS, INC.,)	
Debtor.)	
)	

**PROOF OF CLAIM OF THE UNITED STATES OF AMERICA ON BEHALF OF THE
 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED
 STATES DEPARTMENT OF THE INTERIOR**

1. The United States of America (the “Government”) files this proof of claim (the “Proof of Claim”) on behalf of the United States Environmental Protection Agency (“EPA”) and the United States Department of the Interior (“DOI”), including its components the Bureau of Land Management (“BLM”) and the United States Fish and Wildlife Service (“FWS”), against debtors Magnesium Corporation of America (“MagCorp”) and Renco Metals, Inc. (“Renco Metals”) (collectively, “Debtors”), for the recovery of: (1) response costs incurred and to be incurred by the

Government under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675, and (2) natural resource damages, including assessment costs, under Section 107 of CERCLA, in connection with Debtors’ operation of a magnesium production facility located in Rowley, Utah, adjacent to the Great Salt Lake and approximately 23 miles west of Grantsville, Utah (the “Utah Facility”). In addition, with respect to equitable remedies that are not within the Bankruptcy Code’s definition of “claim,” 11 U.S.C. § 101(5), this Proof of Claim is filed in a protective fashion only.

2. This Proof of Claim incorporates by reference herein and supplements, but does not replace or revoke, the proofs of claim filed by the United States on behalf of EPA against Debtors, dated February 20, 2002, and the request for payment of administrative expenses filed by the United States on behalf of EPA, dated February 18, 2003. This Proof of Claim does not affect the proofs of claim previously filed by the United States on behalf of DOI (for BLM) dated February 19, 2002, March 27, 2002, and April 19, 2004, or the request for payment of administrative expenses filed by the United States on behalf of DOI (for BLM), dated February 18, 2003. The previously filed proofs of claim and requests for payment of administrative expenses are attached hereto for the convenience of the Court as Exhibits A-G.

BACKGROUND

3. The Utah Facility processes brine from the Great Salt Lake and produces magnesium and magnesium alloys, liquid chlorine, hydrochloric acid, ferrous and ferric chloride, calcium chloride, and potassium salts. It is one of the largest producers of magnesium in the world.

4. At times pertinent hereto, the Utah Facility generated at least five different hazardous wastes and/or treated, stored, or disposed of them in on-site landfills, ditches, and surface impoundments. It also generated and/or treated, stored or disposed of solid waste containing hazardous substances, including dioxins, furans, hexachlorobenzene (“HCB”), polychlorinated biphenyls (“PCBs”), arsenic, and chromium. The Utah Facility comprised approximately 4,525 acres, and was a “facility” within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

5. The Utah Facility was constructed in 1972 by National Lead, Inc., and, in 1980, was purchased by AMAX, Inc., and operated through debtor MagCorp, which at that time was a subsidiary of AMAX, Inc., named AMAX Magnesium Corp. In 1989, RENMAG, Inc., purchased AMAX Magnesium Corp. and changed its name to Magnesium Corporation of America.

6. Debtor Renco Metals, a holding company, became the 100% direct owner of MagCorp in 1993.

7. Debtor MagCorp operated the Utah Facility until June 24, 2002, when the Court approved a sale of substantially all of MagCorp’s assets to US Magnesium LLC (“US Mag”), over the objection of the United States. US Mag was created by Renco Metals’ parent corporation, The Renco Group, Inc. (“Renco Group”), for the specific purpose of purchasing MagCorp’s assets from its bankruptcy estate. US Mag currently owns and operates the Utah Facility.

8. During the periods relevant to this Proof of Claim, Ira Rennert (“Rennert”) was the Chairman of the Board of Renco Group, Renco Metals, and MagCorp, the sole director of Renco Metals, and the Chief Executive Officer of Renco Group and Renco Metals. Rennert, individually

or through trusts and corporations created and controlled by him, controlled Renco Group, Renco Metals, and MagCorp, and treated them as a single entity. Rennert, through Renco Group and other affiliated organizations, controlled Renco Metals, including designation of Renco Metals' board of directors and officers, Renco Metals' management policies, its mergers, sales of assets, and debt transactions, and its exercise of control over MagCorp. Additionally, because of significant transfers of assets from MagCorp to Renco Metals and its owners, both MagCorp and Renco Metals were, at all relevant times, undercapitalized, insolvent on a balance sheet basis, and unable to pay their debts to the Government for their environmental liabilities. With respect to the time periods and matters at issue in this case, Renco Metals and MagCorp are alter egos of one another, and of Rennert and his affiliates.

9. At relevant times, MagCorp's operations at the site have been controlled by Rennert, including through Renco Metals. Renco Metals acted as an operator of the Utah Facility for the purpose of the environmental laws, in that it and its agents through or at the behest of Renco Group and Rennert participated in and/or approved decisions at the Utah Facility related to disposal and management of that Utah Facility's hazardous wastes, and managed, directed, or conducted operations relating to the disposal of hazardous waste and compliance with environmental regulations.

**THE GOVERNMENT'S PREVIOUSLY FILED PROOFS OF CLAIM AND REQUESTS
FOR PAYMENT OF ADMINISTRATIVE EXPENSES**

Claim Previously Filed on Behalf of EPA

10. The United States on behalf of EPA filed a proof of claim dated February 20, 2002, against Debtors for civil penalties under Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid

Waste Amendments of 1984 (collectively, “RCRA”), 42 U.S.C. § 6928, with respect to violations of federal and State of Utah hazardous waste regulations at the Utah Facility.

11. As described in the February 20, 2002 proof of claim on behalf of EPA, the Government’s claim for civil penalties covers a period beginning five years prior to January 16, 2001. The civil penalties accrued each day after that date until the date of the sale of the Utah Facility from Debtors to US Mag. The penalties are to be determined by the Court in an amount not to exceed \$25,000 per violation per day through January 30, 1997, and not to exceed \$27,500 per violation per day after January 30, 1997. During the relevant period, Debtors were responsible for multiple violations per day.

12. The February 20, 2002 proof of claim also asserted, on a protective basis, Debtors’ obligations to comply with (a) RCRA; (b) an Administrative Order on Consent, effective June 22, 2001, to address an imminent and substantial endangerment from the handling of solid waste at the Utah Facility containing high concentrations of dioxins, furans, and HCB; and (c) an Administrative Order, issued June 15, 2001, to address an imminent and substantial endangerment from the handling of solid waste at the Utah Facility containing dioxins, furans, HCB, PCBs, arsenic, and chromium.

**Request for Payment of Administrative Expenses
Previously Filed on Behalf of EPA**

13. The United States on behalf of EPA filed a request for payment as an administrative expense of all RCRA penalties accruing post-petition. Such penalties continued to accrue against Debtors post-petition until the sale of the Utah Facility.

**Claims and Request for Administrative Expenses
Previously Filed on Behalf of DOI**

Right-of Way and Rent Liabilities

14. On February 20, 2002, the Government filed a proof of claim against Debtors on behalf of DOI for rent due in connection with a right-of-way grant (ROW U-54897) to construct an intake canal and evaporative ponds system (the “Knolls Facility”), to be used in connection with operations at the Utah Facility, on land owned by the Government and operated by BLM. The claim also asserted Debtors’ obligation to conduct reclamation of the Government land subject to the grant. At the time the Government filed the proof of claim, the amount of the rent due was \$68,969.96, and BLM’s cost estimate for reclamation was \$6,051,640. On March 27, 2002, the Government filed an amended proof of claim stating that the reclamation liability is asserted on a protective basis with respect to any injunctive obligations Debtors had under ROW U-54897 and is entitled to administrative priority status. In both the February 20, 2002, and March 27, 2002 proofs of claim, the Government also asserted administrative priority with respect to the unpaid rent.

15. The Government filed a request for payment of administrative expenses, dated February 18, 2003, on behalf of DOI with respect to the rent and reclamation liabilities. As to the reclamation liabilities, the Government reiterated that the obligation to perform the reclamation is a non-dischargeable injunctive obligation, but protectively asserted in the alternative that the reclamation liabilities had administrative priority.

Liability for Extracted Minerals

16. The Government filed another proof of claim against Debtors on behalf of DOI on February 20, 2002, in connection with Debtors' liability for extracting minerals contained in surface water derived from groundwater on or underlying Government land at the Knolls Facility without a mineral lease from the Government. The Government asserted a claim for, among other things, the full value, plus interest, of the minerals Debtors extracted, without deduction for labor or expenses.

17. On April 19, 2004, the Government filed a second amended proof of claim against Debtors, supplementing, not replacing or revoking, the previously filed proofs of claim, seeking \$167,399.46, plus interest, for minerals MagCorp extracted from Government land in Sections 33 and 34, Township 3 North, Range 8 West, without a permit from BLM.

**CLAIM FOR RESPONSE COSTS UNDER CERCLA BY
UNITED STATES ON BEHALF OF EPA AND DOI**

18. During its ownership and operation of the Utah Facility, MagCorp released hazardous substances from the Utah Facility. These hazardous substances have been determined to include arsenic, chromium, mercury, copper, zinc, acidic waste water, chlorinated organics, PCBs, dioxins/furans, HCB, and polycyclic aromatic hydrocarbons ("PAHs"). MagCorp and Renco Metals are liable to the Government as former owners and/or operators of the Utah Facility at the time of disposal of hazardous substances pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

19. Manufacturing operations at the Utah Facility include removing minerals from Great Salt Lake surface waters and groundwater brines by concentrating the waters in solar evaporating ponds and in concentrator tanks that utilize waste heat from other facility processes;

treating the concentrated brine to remove potassium, boron and sulfates; spray drying the brine to produce an impure anhydrous magnesium-rich powder; melting and chlorinating the powder to convert magnesium oxide therein into magnesium chloride; separating the molten magnesium metal from chlorine gas by electrolysis; casting the magnesium into desired products; and capturing, and recycling or selling, chlorine gas and hydrochloric acid generated in the electrolytic refining process. Manufacturing facilities include solar evaporation ponds; a boron plant; a calcium chloride plant; spray dryers; melt cells; electrolytic cells; a chlorine plant; hydrochloric acid manufacturing plant; a cast house; and a ferrous and ferric chloride processing plant.

20. Hazardous substances within the meaning of CERCLA Sections 101(14) and 102(a), 42 U.S.C. §§ 9601(14) and 9602(a), have been detected in the soil, groundwater and surface water at the Utah Facility and include heavy metals, acidic wastewater, PCBs, dioxins/furans, HCB and PAHs.

21. In response to the continued threat of release of hazardous substances at or from the Utah Facility, EPA listed the Utah Facility on the National Priorities List, which comprises the most seriously contaminated sites nationwide, on November 4, 2009.

22. Subsequent to this November 4, 2009 listing, the cleanup of hazardous substances released at the Utah Facility has principally been addressed under EPA's Superfund program.

23. As part of this clean-up effort, EPA has incurred unreimbursed past response and oversight costs of approximately \$5,974,371.05 as of March 1, 2017, which were incurred for, among other things, participating in and overseeing the remedial investigation and feasibility study ("RI/FS") of the Utah Facility in coordination with US Mag, the Utah Department of

Environmental Quality, and DOI. The remedial investigation involves the collection of data to characterize site conditions, determine the nature of the contaminants, and assess risks to human health and the environment. The feasibility study is the mechanism for developing, screening, and evaluating alternative potential remedial actions.

24. In addition, EPA estimates that future response action and oversight costs at the Utah Facility will be at least \$100.6 million for, among other things, completion of the RI/FS and remedial action to address uncontrolled releases of contaminants at and from the Utah Facility.

25. Additionally, there are over 15,000 acres of BLM land and mineral rights surrounding the Utah Facility. Breaches in evaporation pond embankments immediately adjacent to land owned by BLM have resulted in the release of hazardous substances onto BLM land. In addition to releases of hazardous waste water, BLM has reason to believe that hazardous substances may have been released onto BLM land and subsurface ground water from unlined evaporation ponds and atmospheric deposition. As a result of the release and threatened release of hazardous substances onto BLM land, at this time, BLM has incurred unreimbursed past response costs and oversight costs of approximately \$361,000, for, among other things, establishing institutional controls, acquiring safety equipment, conducting response training, testing, and investigation, and performing oversight. In addition, BLM estimates that future costs for project management, further investigations, and other response actions and oversight will be \$1,312,000.

26. This Proof of Claim is filed for all unreimbursed past and future response costs, plus interest, for which Debtors are liable to the United States on behalf of EPA and DOI (on behalf of BLM) in connection with the release or threatened release of hazardous substances

from the Utah Facility pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Other potentially responsible parties (“PRPs”), if any, may be jointly and severally liable along with Debtors.

27. These claims are entitled to administrative expense priority as chapter 11 administrative expenses to the extent that they relate to hazardous substances released from the Utah Facility during the period when it was property of and/or operated by the estate. *See generally Reading Co. v. Brown*, 391 U.S. 471 (1968).

**CLAIM FOR NATURAL RESOURCE DAMAGES UNDER CERCLA
BY UNITED STATES ON BEHALF OF DOI**

28. Studies and information available to date indicate that hazardous substances discharged by Debtors at the Utah Facility have injured natural resources, including but not limited to birds and plants, in the area at and around the Utah Facility.

29. Sections 107(a) and 107(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 107(f), provide for the recovery of damages for injury to, or destruction or loss of, natural resources caused by the release of hazardous substances to the environment. Injured natural resources may include, but are not limited to, birds, mammals, fish, plants, and their supporting habitats. The Government, including through BLM and FWS, is authorized to act on behalf of the public as a trustee to recover natural resource damages, including the reasonable cost of assessing the injury to, or destruction or loss of, natural resources.

30. At this time, BLM and FWS have incurred approximately \$123,694 in unreimbursed costs associated with its assessment of natural resource damages caused by the release of hazardous substances from the Utah Facility.

31. BLM and FWS estimate natural resource damages in the amount of \$12,942,048, based on the cost of replacing the injured natural resources.

32. This Proof of Claim is filed for assessment costs and natural resource damages caused by the release of hazardous substances from the Utah Facility for which Debtors are liable to the Government pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Other PRPs, if any, may be jointly and severally liable along with Debtors.

33. These claims are entitled to administrative expense priority as chapter 11 administrative expenses to the extent that they relate to hazardous substances released from the Utah Facility during the period when it was property of and/or operated by the estate. *See generally Reading*, 391 U.S. 471.

SUBSTANTIVE CONSOLIDATION

34. The United States reserves the right to move for the substantive consolidation of Debtors' estates, such that the assets of all Debtors are available to pay the liabilities of all Debtors, to the extent that such substantive consolidation is warranted by the facts and applicable law.

ADDITIONAL TERMS

35. This Proof of Claim is filed in a protective manner with respect to any and all injunctive obligations of Debtors under RCRA, 42 U.S.C. §§ 6901-6992k, ROW U-54897, or other applicable law. Debtors are liable for any and all injunctive obligations that they are required to perform under RCRA, RCRA permits, RCRA administrative orders, ROW U-54897, or other applicable law. It is the Government's position that a proof of claim is not required to be filed for such injunctive obligations and requirements.

36. Nothing herein limits the authority of the Government to pursue the direct and indirect owners of Renco Metals for Debtors' environmental liabilities.

37. This Proof of Claim is filed as an unsecured non-priority claim, except to the extent that (i) any rights of setoff secure the Government's claims; (ii) any secured/trust interest exists in insurance proceeds received by Debtors on account of the Government's claims; (iii) any financial assurance (such as letters of credit or performance bonds) posted by Debtors in favor of the Government or any federal agency in connection with the matters discussed herein exists; and (iv) administrative priority exists with respect to property of the estate for post-petition violations of law, releases of hazardous substances or response costs incurred, or otherwise.

38. This Proof of Claim is also filed to the extent necessary to protect the Government's rights with respect to any insurance proceeds received by Debtors, and any funds held in escrow by Debtors, in connection with the matters discussed herein.

39. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against the claims herein, debts owed (if any) to Debtors by the Government or any federal agency.

40. The Government has not perfected any security interest on its claims against Debtors.

41. Except as stated in this Proof of Claim, no judgments against Debtors have been rendered on the claims set forth herein.

42. No payments to the Government have been made by Debtors on the claims set forth herein.

43. This Proof of Claim reflects certain known liabilities of Debtors to the Government. The Government reserves the right to amend this Proof of Claim to assert additional liabilities, including but not limited to liabilities for additional costs for the matters discussed herein.

44. Additional documentation in support of this Proof of Claim is too voluminous to attach, but is available upon request.

Dated: New York, New York
March 15, 2017

Respectfully submitted,

As to the Law:

JOON H. KIM
Acting United States Attorney for the
Southern District of New York
Attorney for the United States of America

By: /s/ Christine S. Poscablo
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- and -

NATHANIEL DOUGLAS
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Environmental Enforcement Section
Environment and Natural Resources Division

DEBORAH M. REYHER
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Washington, DC 20044

Exhibit A

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		PROOF OF CLAIM
Name of Debtor <u>Magnesium Corp. of America</u>		Case Number <u>01-14312 (REG)</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>United States of America</u>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: <u>Bernice Corman</u> <u>U.S. Dept. of Justice - ENRD</u> <u>P.O. Box 7611, Washington, DC 20044-7611</u> Telephone number: <u>(202) 514-1543</u>	THIS SPACE IS FOR COURT USE ONLY	
Account or other number by which creditor identifies debtor:	Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends	
1. Basis for Claim		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>penalties for envt'l violations</u> </div> <div style="width: 50%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ (date) to _____ (date) </div> </div>		
2. Date debt was incurred: <u>still accruing</u>		
3. If court judgment, date obtained:		
4. Total Amount of Claim at Time Case Filed: \$ <u>unliquidated</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	6. Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>unliquidated</u> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input checked="" type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY <div style="text-align: center; font-size: small;"> FILED 2017 MAR 20 PM 3:38 SDNY </div>
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date <u>2/20/2002</u>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>Edward Chary</u> <u>Assistant U.S. Attorney</u>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

FORM B10 (Official Form 10) (4/01)

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		PROOF OF CLAIM
Name of Debtor Renco Metals, Inc.		Case Number 01-14311 (REG)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): United States of America		FILE COPY
Name and address where notices should be sent: Bernice Corman U.S. Dept. of Justice - ENRD P.O. Box 7611 Washington, DC 20044-7611 Telephone number: (202) 514-1543		
Account or other number by which creditor identifies debtor:		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends		THIS SPACE IS FOR COURT USE ONLY
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Penalties for env'tl violations</u>		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ (date) to _____ (date)		
2. Date debt was incurred: still accruing		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ <u>unliquidated</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>unliquidated</u> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input checked="" type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date 2/20/2002	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): Edward Chang, Assistant U.S. Attorney	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

JAMES B. COMEY
 United States Attorney for the
 Southern District of New York
 Attorney for United States of America
 By: Edward Chang (EC-8218)
 Assistant United States Attorney
 100 Church Street, 19th Floor
 New York, NY 10007
 Telephone: (718) 422-5628

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----	x	Chapter 11
In re	:	
	:	
MAGNESIUM CORPORATION OF AMERICA,	:	Case No. 01-14312 (REG)
	:	
Debtor.	:	
-----	x	(Jointly Administered)
In re	:	
	:	
RENCO METALS, INC.,	:	Case No. 01-41311 (REG)
	:	
Debtor.	:	
-----	x	

**PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF THE UNITED
 STATES ENVIRONMENTAL PROTECTION AGENCY**

A. Preliminary Statement

1. This Proof of Claim is filed by the United States at the request of the United States Environmental Protection Agency ("EPA"). The Attorney General is authorized to make this Proof of Claim on behalf of the United States. This Proof of Claim relates to:

(a) the liability of Debtors Magnesium Corporation of America ("MagCorp") and Renco Metals, Inc. ("Metals") (collectively, "Debtors") for civil penalties and injunctive relief under Section 3008 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 ("HSWA")

(collectively "RCRA"), 42 U.S.C. § 6928, with respect to violations of federal and State of Utah hazardous waste regulations at the facility ("Facility") located at Rowley, Utah, approximately 23 miles west of Grantsville, Utah; and

(b) MagCorp's liability under an Administrative Order on Consent, Docket No. RCRA-8-2000-16, effective June 22, 2001 ("AOC"), to address an imminent and substantial endangerment from the handling of solid waste at the Facility containing high concentrations of dioxins, furans, and hexachlorobenzene ("HCB"); and

(c) MagCorp's liability under an Administrative Order, Docket No. RCRA-8-2001-05, issued June 15, 2001 ("AO"), to address an imminent and substantial endangerment from the handling of solid waste at the Facility containing dioxins, HCB, polychlorinated biphenyls, arsenic, and chromium.

2. The Facility is located on the southwest shore of the Great Salt Lake in Utah. The Facility processes brine from the Great Lake and produces magnesium and magnesium alloys, liquid chlorine, hydrochloric acid, ferrous and ferric chloride, calcium chloride, and potassium salts.

3. The Facility generates at least five different hazardous wastes and/or treats, stores, or disposes of them in landfills, ditches, and surface impoundments located there and has done so since at least 1989.

4. The Facility generates and handles solid waste containing dioxins, furans, HCB, polychlorinated biphenyls, arsenic, and chromium.

5. The Facility is owned by MagCorp, which in turn is a wholly owned subsidiary of Metals.

B. Basis Of EPA's Claim For Violations of Hazardous Waste Requirements

6. The basis for Debtors' liability at the Facility under Section 3008 of RCRA, 42 U.S.C. § 6928, is as follows:

(a) On or about January 16, 2001, the United States commenced a lawsuit against, MagCorp and Metals, among other parties, in the United States District Court for the District of Utah pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, entitled United States of America v. Magnesium Corporation of America, et al., Case No. 2:01CV0040B (the "Lawsuit" or the "Complaint"). By this Lawsuit, the United States: (i) seeks civil penalties for MagCorp's violations of RCRA and certain state hazardous waste regulations; (ii) requests injunctive relief required to bring MagCorp into compliance with RCRA and all other applicable state and federal environmental statutes and regulations; and (iii) seeks to establish, among other things, Metals' liability for the acts and omissions of MagCorp.

(b) The Complaint alleges that MagCorp has violated and continues to violate various federal and state hazardous waste requirements under RCRA Subchapter III, 42 U.S.C. §§ 6921 et seq., as follows: First Claim for Relief -- Failure To Make Hazardous Waste Determinations As A Generator; Second Claim for Relief -- Violation of Standards Pertaining to Hazardous Waste Generators; Third Claim for Relief -- Violation of Standards Pertaining to Generators of Used Oil; Fourth Claim for Relief -- Illegal Treatment of Hazardous Waste; Fifth Claim for Relief -- Illegal Disposal of Hazardous Waste; Sixth Claim for Relief -- Failure to Comply with Standards for Treatment, Storage and Disposal of Hazardous Waste in Surface Impoundments; Seventh Claim for Relief -- Failure to Close Surface Impoundments; Eighth Claim for Relief -- Failure to Comply with Standards for Treatment, Storage and Disposal of

Hazardous Waste in Landfills; Ninth Claim for Relief -- Illegal Land Disposal; Tenth Claim for Relief -- Violation of Groundwater Monitoring Requirement Applicable to Owner/Operators; Eleventh Claim for Relief -- Violation of Requirement that Owner/Operators File Closure Plans; Twelfth Claim for Relief -- Violation of Requirement that Owner/Operators Provide Financial Assurances; Thirteenth Claim for Relief -- Violation of Requirement that Owner/Operators Minimize Releases; Fourteenth Claim for Relief -- Violation of Requirement that Owner/Operators Maintain Operating Records; Fifteenth Claim for Relief -- Violation of Requirement that Owner/Operators Analyze Hazardous Wastes; and Sixteenth Claim for Relief -- Failure to Comply with General Facility Standards Applicable to Owners/Operators.

(c) The Complaint alleges that MagCorp is a closely held corporation owned wholly by Metals and controlled by Metals and the owners of Metals. Because of significant transfers of assets to Metals and the owners of Metals, MagCorp is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. Metals is liable for MagCorp's violations of RCRA and any other acts and omissions of MagCorp alleged in the Complaint.

(d) The Complaint requests a civil penalty for violations of federal and state hazardous waste regulations commencing five years preceding its January 16, 2001 filing and continuing in an amount not to exceed Twenty Five Thousand Dollars (\$25,000) for each day of each violation before January 30, 1997 and not to exceed Twenty Seven Thousand and Five Hundred Dollars (\$27,500) for each day of each violation after January 30, 1997, or such other amount as determined by the Court. Debtors are liable to the United States for this amount.

(e) The Complaint requests injunctive relief requiring MagCorp to (i) comply with RCRA and all applicable environmental laws, (ii) submit a plan with enforceable schedules to segregate non-hazardous wastes from hazardous wastes and manage them separately; (iii) properly manage, treat, store, dispose, or recycle hazardous wastes; (iv) characterize the nature and extent of releases; and (v) perform site-wide corrective action for all solid waste management units. Debtors are liable to the United States for performing all injunctive relief.

7. The United States hereby asserts a claim against the Debtors for all penalties described in paragraph 6, including injunctive relief on a protective basis as set forth in paragraphs 20 and 21 below.

C. Basis of EPA's Claim Under AOC Docket No. RCRA-8-2000-16

8. EPA and MagCorp entered into the AOC, Docket No. RCRA-8-2000-16, under Section 7003 of RCRA, 42 U.S.C. §§ 6901 et seq., effective June 22, 2001.

9. The AOC stated in its "Findings of Fact" that workers could be exposed to high concentrations of dioxins and/or HCB in or near ditches and ponds at the Facility, in particular, the "western" ditch and spoils near the western ditch, through ingestion, dermal, or respiratory exposure.

10. The AOC stated in its "Findings of Fact" that dioxins and HCB could cause adverse health effects in humans.

11. The AOC stated in its "Conclusions of Law" that the past or present handling of solid waste at the facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.

12. The AOC required MagCorp *inter alia* to (i) conduct testing for dioxins, furans and HCB at portions of the Facility; (ii) perform a risk assessment of worker exposure to these substances; (iii) perform remediation as indicated by the risk assessment; (iv) investigate potential sources of dioxin, furan and HCB formation in its manufacturing process; (v) comply with certain reporting requirements; and (vi) submit a work plan to implement these tasks.

13. The United States hereby asserts, on a protective basis as described in paragraphs 20 and 21 below, a claim against MagCorp for all actions required under the AOC as summarized in paragraph 12.

D. Basis of EPA's Claim Under AO Docket No. RCRA-8-2001-05

14. The EPA issued the AO, Docket No. RCRA-8-2001-05, under Section 7003 of RCRA, 42 U.S.C. §§ 6901 et seq., on June 15, 2001.

15. The AO stated in its "Findings of Fact" that workers could be exposed to high concentrations of chlorine gas, HCB, dioxins, furans, PCBs, arsenic, and chromium at various points around the Facility, and in particular to HCB, dioxins, furans, PCBs, arsenic, and chromium in anode dust at the Facility.

16. The AO stated in its "Findings of Fact" that workers may suffer adverse health effects from exposure to chlorine gas, HCB, dioxins, furans, PCBs, arsenic, and chromium at various locations at the Facility and, in particular, that workers who handle anode dust at the Facility may suffer serious adverse health effects.

17. The AO stated in its "Conclusions of Law" that the past or present handling of solid waste at the Facility, including anode dust, may present an imminent and substantial

endangerment to health or the environment within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

18. The AO required MagCorp *inter alia* to (i) stop release of anode dust from the "anode dust headers"; (ii) investigate soils in the vicinity of the anode dust header area and remediate the area if necessary; and (iii) evaluate and recommend to EPA methods to eliminate formation and/or releases of dioxins, furans, hexachlorobenzene and other chemicals at the Facility.

19. The United States hereby asserts, on a protective basis as described in paragraphs 20 and 21 below, a claim against MagCorp for all actions required under the AOC as summarized in paragraph 18.

E. Miscellaneous Provisions

20. Certain statutory and regulatory obligations of Debtors under RCRA, including MagCorp's obligations under the AOC and the AO issued pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and Debtors' obligations to perform injunctive actions requested in the Complaint, are mandatory injunctive obligations that are not dischargeable claims within the meaning of Section 101(5) of the Bankruptcy Code. It is the United States' position that it is not required to file a Proof of Claim with respect to such mandatory injunctive obligations of the Debtors. The Debtors, including any successor to MagCorp or Metals, must comply with such mandatory injunctive obligations.

21. This Proof of Claim is protective in nature as to any injunctive obligations of the Debtors under RCRA, including any mandatory injunctive obligations alleged in the Complaint or set forth in the AOC and the AO. Court-ordered and regulatory obligations of the

Debtors are mandatory injunctive obligations of the Debtors for which proofs of claim need not be filed under the Bankruptcy Code. Nevertheless, this claim is filed in protective fashion to protect the United States' rights with respect to such injunctive obligations. The United States reserves the right to take future actions to enforce any such obligations of the Debtors. Nothing in this Proof of Claim constitutes an election of remedies or a waiver of any rights of the United States.

22. This Proof of Claim reflects the known liability of the Debtors to the United States on behalf of the EPA. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the Debtor by this or any other federal agency.


23. The United States has not perfected any security interest on its claim against the Debtors.

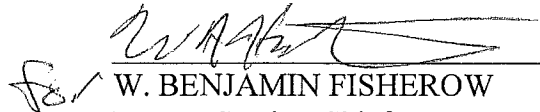
24. This Proof of Claim is filed as a general unsecured claim, except that the United States is entitled to administrative priority for any post-petition liabilities of the Debtors. This Proof of Claim is filed only in protective fashion with respect to such post-petition liabilities and is not a waiver of the United States' right to administrative priority status. The United States will file any application for administrative expense priority at the appropriate time.


Dated: February 20, 2002
New York, NY

JAMES B. COMEY
United States Attorney for the
Southern District of New York

By:


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EXHIBIT A

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

Docket No. RCRA-8-2000-16

JUN 22 AM 10:15
EPA REGION VIII
RECORDS CLERK

IN THE MATTER OF:

Magnesium Corporation of America

Rowley, Tooele County, Utah

Respondent.

PROCEEDING UNDER SECTION 7003
OF THE SOLID WASTE DISPOSAL ACT,
AS AMENDED, 42 U.S.C. § 6901 et seq.,
42 U.S.C. § 6973

ADMINISTRATIVE ORDER ON
CONSENT

I. JURISDICTION

1. EPA has the authority to enter into this Administrative Order on Consent ("Consent Order") pursuant to Section 7003(a) of the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act, as amended by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (hereinafter referred to as "RCRA" or the "Act"), 42 U.S.C. § 6973(a) ("Section 7003"). The authorities vested in the Administrator pursuant to RCRA have been properly delegated to the undersigned officials.

2. Magnesium Corporation of America ("Respondent" or "MagCorp") agrees to undertake all actions required by the terms and conditions of this Consent Order. Respondent's participation in this Consent Order shall not constitute or be construed as an admission of liability or of EPA's findings, determinations, Findings of Fact, or Conclusions of Law, except that, in any action by EPA or the United States to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the delegated authority to issue or enforce this Consent Order, and agrees not to contest the validity of this Consent Order or its terms.

II. INTRODUCTION

3. This Consent Order is entered into voluntarily by the United States Environmental Protection Agency Region VIII ("EPA") and Respondent. This Order concerns the performance of Work at the Rowley, Utah production facility owned and operated by Respondent.

4. Magnesium Corporation of America is a corporation incorporated in the State of Delaware with its principal place of business in the State of Utah.

5. Respondent is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15).

6. Respondent has contributed or is contributing to the past or present handling of "solid waste" within the meaning of Section 1004(27) of the Act, 42 U.S.C. § 6903(27), at the facility located approximately fifteen miles north of Exit 77 from Interstate 80 at Rowley, Utah, (the "facility").

7. Tetrachlorodibenzo-p-dioxins and hexachlorobenzene are hazardous constituents as provided for at 40 C.F.R. Part 261, Appendix VIII, and Utah Admin. R. § R315-50-10.

8. EPA has determined that the past or present handling of solid waste at the facility may present an imminent and substantial endangerment to health or the environment.

9. Pursuant to Section 7003(a) of the Act, 42 U.S.C. § 6973(a), EPA has notified the State of Utah of this action.

10. EPA has determined that entering into this Consent Order pursuant to Section 7003, 42 U.S.C. § 6973, is necessary to protect public health or the environment.

III. PARTIES BOUND

11. This Consent Order shall apply to and be binding upon EPA and Respondent and their respective officers, employees, agents, successors and assigns.

12. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within five (5) days after the effective date of this Consent Order or date of such retention and shall condition all such contracts on compliance with terms of this Consent Order.

13. Respondent shall give notice to EPA fourteen (14) days prior to transfer of ownership or operation of the facility. Unless agreed to by EPA, any such transfer shall not alter Respondent's obligations under this Order.

IV. FINDINGS OF FACT

General Findings of Fact

14. Respondent is a corporation incorporated in the State of Delaware, with its principal place of business in the State of Utah.

15. Respondent has owned and operated the facility since 1980. Amax Specialty Metal owned Respondent's stock prior to 1989, and during that time Respondent did business under the name Amax Magnesium. In 1989, Amax Specialty Metal sold Respondent's stock to Renco Metals, Inc., which changed Respondent's name to Magnesium Corporation of America, or MagCorp.

16. The facility is located at Rowley, Tooele County, Utah, in Township 2N, Range 8W, Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, and 16, at longitude 112 degrees 44 minutes west, latitude 40 degrees 55 minutes north.

17. The mailing address of the facility is 238 North 2200 West, Salt Lake City, Utah 84116.

18. The facility produces magnesium using an anhydrous electrolytic production process. In addition to magnesium metal and alloys, the facility produces chlorine, ferric and ferrous chloride, and calcium chloride, and is producing or has produced other materials as well. The main raw material is concentrated brine from the Great Salt Lake.

19. The facility discharges wastestreams from production processes into several ditches, including the "western" ditch (also called the "center" or "central" ditch), all of which aggregate into a ditch, the "Main" Ditch (also called the "Red River" ditch) that flows into a 400-acre pond. The pond has a pH of approximately 1.

20. In September 1998, the State of Utah collected samples at the western ditch for dioxin analysis. Respondent received splits of these samples. In December 1998, Respondent collected additional samples of sediments in the ditch and spoils (material dredged from the ditch and placed along the sides of the ditch) for analysis for dioxin. The State and MagCorp obtained the following results:

Dioxin Results*
(parts per billion)

<u>Location</u>	<u>State of Utah</u>	<u>MagCorp</u>
Ditch (9/98)	31.30	39.00
Ditch Spoils (12/98)		126.00
Ditch (12/98)		130.10
Ditch Spoils (12/98)		65.70

*TEQ adjusted concentration. See Paragraph 25, below.

21. The State in September 1998, Respondent in October 1998, and EPA in August 1999, collected samples from sediment in the western ditch and spoils along the sides of the ditch for analysis for hexachlorobenzene ("HCB"). Respondent received splits of the EPA samples. The State, MagCorp, and EPA obtained the following results:

Hexachlorobenzene Results (parts per million)

	<u>State of Utah</u>	<u>MagCorp</u>	<u>EPA</u>
Ditch (4 sample points) 10/98			
Sample 1		61.90	
Sample 2		179.00	
Sample 3		82.40	
Sample 4		91.00	
Ditch (9/98)	320		
Ditch (8/99)			210
Ditch Spoils East Side (8/99)			260
Ditch Spoils West Side (8/99)			400 390 (duplicate)

22. Analytical data provided by Respondent indicate that the ditch sediment and ditch spoils contain or have contained contaminants at concentrations which EPA has determined are hazardous to public health or the environment, including dioxin and HCB.

23. Workers may be exposed to dioxin and/or HCB at the facility, including dioxin and HCB in or near the ditches or the pond, through ingestion, dermal, or respiratory exposure.

Findings of Fact Regarding Effects on Human Health

Dioxin

24. Tetrachlorodibenzo-p-dioxins are hazardous constituents as provided at 40 C.F.R. Part 261, Appendix VIII, and Utah Admin. R. § R315-50-10.

25. There are 75 types, or congeners, of chlorinated dibenzo-p-dioxins and 135 congeners of the closely related chlorinated dibenzofurans. The congener 2,3,7,8-tetrachlorodibenzo-p-dioxin or 2,3,7,8 TCDD, is believed to be the most toxic of the dioxins and furans.

The congener 2,3,7,8 TCDD is lipophilic and can bioaccumulate. The primary site of distribution is adipose tissue. Other sites include the liver, kidney, muscle, pancreas, thyroid, brain, lung, and blood. 2,3,7,8 TCDD has also been identified in breast milk.

The congener 2,3,7,8 TCDD is classified as Group 1, carcinogenic to humans by the International Agency for Research on Cancer ("IARC") and as a known carcinogen by the U.S. Department of Health and Human Services, National Toxicology Program ("NTP"). Although IARC has classified other dioxin and furan congeners as Group 3, unclassifiable as to carcinogenicity in humans, there is scientific consensus for a common mode of action of 2,3,7,8 TCDD and other chlorinated dioxin and furan congeners. See Addendum to 9th Report on Carcinogens (revised January 2001), NTP.

EPA and other agencies recognize a "toxicity equivalence quotient" ("TEQ") approach that has estimated the toxicity of 17 out of 210 congeners of chlorinated dioxins and furans relative to the toxicity of 2,3,7,8 TCDD. By using the TEQ scheme, the concentrations of all the dioxins and furans in a sample can be converted into equivalent units of 2,3,7,8 TCDD and the overall toxicity of the mixture then evaluated based on this single compound. See, NATO-CCMS (North Atlantic Treaty Organization-Committee on the Challenges of Modern Society), (1988a), International Toxicity Equivalency Factor (I-TEF), method of risk assessment for complex mixtures of dioxins and related compounds. Report No. 176; NATO-CCMS, (1988b), Scientific basis for the development of International Toxicity Equivalency Factor (I-TEF), method of risk assessment for complex mixtures of dioxins and related compounds. Report No. 178; Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and Dibenzofurans (CDDs and CDFs) and 1989 Update. EPA/625/3-89/016. March 1989.

When this Order refers to "dioxin," it is to total dioxin TEQ.

IARC and NTP have determined that 2,3,7,8 TCDD is associated with a number of cancers in humans including: multiple myeloma, hepatobiliary tract cancer, lymphoreticulosarcoma, soft tissue sarcoma, respiratory system cancer. The strongest evidence for the carcinogenicity of 2,3,7,8 TCDD is for all cancer combined, rather than any specific cancer.

2,3,7,8 TCDD is associated with endocrine imbalances of the thyroid, adrenal and pituitary glands as well as the gonads in animal studies. 2,3,7,8 TCDD is also associated with other manifestations of reproductive toxicity and impairment in animal studies.

26. The recommended preliminary remediation goal, or starting point, for setting cleanup levels for dioxin-contaminated soils at industrial sites is 5 parts per billion ("ppb") to 20 ppb, corresponding to a cancer risk of 1.3×10^{-4} to 5×10^{-4} , respectively, using default exposure parameters. EPA OSWER Directive 9200.4-26. Given that the concentration of dioxin at the western ditch at the facility may be as high 130 ppb, the cancer risk for workers exposed to those spoils may be as great as 3.6×10^{-3} , assuming default exposure parameters.

27. Dioxins and furans are persistent, bioaccumulative, and toxic and have exerted toxic effects on organs in animal studies. 2,3,7,8 TCDD causes liver tumors in animals. These chemicals have also exhibited adverse noncancer effects on the liver, immune system, reproductive system, and on the developing organism (e.g., birth defects). The potential concurrent exposures to workers may result in adverse noncancer health effects.

Hexachlorobenzene

28. HCB is a hazardous constituent as provided at 40 C.F.R. Part 261, Appendix VIII, and Utah Admin. R. § R315-50-10.

29. HCB is very persistent in the environment due to its chemical stability and resistance to microbial degradation. HCB adheres strongly to soils and does not migrate readily into groundwater. HCB can bioaccumulate in fish, wheat, grasses, some vegetables, and other plants.

Exposure to HCB may cause eye, skin, and respiratory tract irritation. Long-term oral exposure has been reported to cause liver disease with associated skin lesions in humans. Effects on the liver, skin, kidneys, immune system, and blood from oral exposure to HCB have been observed in animal studies.

The following acute (short-term) health effects may occur immediately or shortly after exposure to HCB: breathing HCB can irritate the nose, throat, and lungs; contact can cause eye and skin irritation and may burn the skin.

HCB may damage the liver, kidneys, immune system, and thyroid. High or repeated exposure may damage the nervous system and can cause irritability, difficulty with walking and coordination, muscle weakness, tremor and/or a feeling of pins and needles on the skin.

Repeated exposure can cause permanent skin changes, such as changes in pigment, skin thickening, easy wrinkling, skin scarring, fragile skin, and increased hair growth, such as in the face and forearms.

The toxicological endpoints considered for chronic toxicity are the gastrointestinal system and liver. EPA has established an oral Reference Dose ("RfD") of 0.0008 parts per million ("ppm") per day for HCB based on liver effects in rats.

Animal studies have reported cancer of the liver, thyroid, and kidney from oral exposure to HCB. EPA has placed hexachlorobenzene in Group B2: Probable human carcinogen and has established an inhalation unit risk estimate of 4.6×10^{-4} (microgram per cubic meter)⁻¹.

The International Agency for Research on Cancer has placed HCB in Group 2B: Possible human carcinogen.

30. HCB is persistent, bioaccumulative, and toxic and has exerted toxic effects on the same organs as 2,3,7,8 TCDD in animal studies. HCB causes liver tumors in animals. HCB has exhibited adverse effects on the liver, immune system, reproductive system, and on the developing organism (e.g., birth defects). The potential concurrent exposures to workers from HCB may result in adverse noncancer health effects.

31. The Superfund program in EPA Region 9 has set preliminary remediation goals, or risk-based screening levels, for HCB under an industrial cleanup scenario of 1.5 - 150 ppm, calculated from a cancer risk of 1×10^{-6} to 1×10^{-4} , respectively, and assumed exposure parameters (EPA Region 9 Preliminary Remediation Goals, Superfund Program, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et. seq.). Concentrations of HCB in spoils along the sides of and in the western ditch at the facility range from 62 to 400 ppm. This corresponds to an excess lifetime cancer risk for workers exposed to HCB at the western ditch of between 4.1×10^{-5} and 2.7×10^{-4} , assuming default exposure parameters.

V. CONCLUSIONS OF LAW

32. Respondent is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15).

33. Wastes generated at the facility and managed in the ditch and pond system at the facility are solid wastes as defined in Section 1004(27) of the Act, 42 U.S.C. § 6903(27).

34. Respondent has contributed and/or is contributing to the past or present handling, storage, treatment, transportation or disposal of solid waste at the facility within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.

35. The past or present handling of solid waste at the facility may present an imminent and substantial endangerment to public health or the environment within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.

VI. ORDER

36. Based on the above, EPA has determined that the activities required by this Consent Order are necessary to protect public health or the environment. Respondent agrees to perform the work specified in this Consent Order in the manner and by the dates specified herein. All work undertaken pursuant to this Consent Order shall be performed in a manner consistent with this Consent Order, including all documents incorporated herein pursuant to this Consent Order, and all applicable laws.

37. All plans and documents submitted under any section of the Consent Order shall, upon approval by EPA, be incorporated by reference into this Consent Order as if set forth fully herein.

38. Respondent shall obtain any permits or approvals that are necessary to perform work on or outside the facility under applicable law and shall submit timely applications and requests for any such permits and approvals.

VII. WORK TO BE PERFORMED

39. Respondent has agreed to perform the following work:

40. Respondent shall designate a Project Coordinator responsible for administration of all Respondent's actions required by this Consent Order. Within fifteen days (15) days of the effective date of this Consent Order, Respondent shall submit the designated Project Coordinator's name, address, and telephone number in writing to EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by Respondent. Respondent shall retain a different Project Coordinator within five (5) days following EPA's disapproval of a Project Coordinator and shall submit the coordinator's name, address, telephone number, and qualifications to EPA. EPA has designated John Works, of the Office of Enforcement, Compliance and Environmental Justice, as its Project Coordinator. Respondent shall direct all submissions required by the Consent Order to both the State of Utah, through the Utah Division of Solid and Hazardous Waste ("UDSHW"), and to EPA. Submissions to EPA shall be directed to:

John Works, 8ENF-T
U.S. EPA, Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: (303) 312-6196
Fax: (303) 312-6409

and for UDSHW all submissions shall be directed to:

Mr. Allan Moore
Utah Department of Environmental Quality
UDSHW
288 North 1460 West
Salt Lake City, Utah 84114-4880
Telephone: (801) 538-6170
Fax: (801) 538-6715

41. Within fifteen days (15) days of the effective date of this Consent Order, Respondent shall notify EPA in writing of the name, address, and telephone number of the contractor it has retained to perform the work outlined in the Statement of Work ("SOW"), Attachment 1 to this Consent Order. Respondent shall notify EPA of the name(s) and qualifications of any other contractor(s) retained to perform work under this Consent Order at least five (5) days prior to the commencement of any task outlined in the SOW. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor within ten (10) days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within ten (10) days of EPA's disapproval.

42. Within thirty five (35) days of the effective date of this Consent Order, Respondent shall submit to EPA for approval a draft Work Plan for performing the Work designated in the SOW. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Consent Order. Maximum schedule dates for each required task are specified in Attachment 2 of this Consent Order. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan and its required submittals in a manner that is consistent with the Work designated in the SOW or as agreed upon by Respondent and EPA. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within fourteen (14) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan and its required submittals as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the task proposals required in the SOW and any other Work Plan submittals, the schedule, and any subsequent modifications shall be fully enforceable under the Consent Order. Respondent shall not commence or undertake any Work onsite without prior EPA approval. The submittal of the

draft Work Plan, other required SOW submittals, and the final Work Plan are subject to stipulated penalties in accordance with Section XVIII (Failure To Comply) of this Consent Order.

VIII. SITE MONITORING AND REPORTING

43. Progress Reports. Respondent shall submit monthly written progress reports to EPA concerning actions undertaken pursuant to this Consent Order. The reports shall be submitted within fifteen (15) days of the end of a given month, beginning after the date of receipt of EPA's approval of the Work Plan until completion of all tasks required by the SOW. These reports shall follow a standard format that consists of the topics on the following list: a) activities accomplished and progress made this reporting period; b) problems and how resolved; c) sampling/laboratory activities: samples collected, analyses requested, and analytical results received; d) deliverables submitted; e) personnel or schedule changes; and f) activities planned next reporting period.

44. Completion Report. Within thirty (30) days after completion of all tasks required by the SOW, Respondent shall submit for EPA review and approval a Completion Report summarizing the actions taken to comply with this Consent Order. The Completion Report shall have accompanying appendices containing all relevant documentation generated, including manifests, invoices or purchase orders, bills, contracts, receipts, and canceled checks. The Completion Report shall include the following certification which is binding on Respondent and signed by Respondent's designated Project Coordinator who supervised or directed the preparation of the report:

Under penalty of law, I certify to the best of my knowledge, information, and belief, after appropriate inquiries of all relevant persons involved in the preparation of these reports, that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

IX. EMERGENCY ACTION

45. In the event Respondent identifies a threat to public health or the environment at the facility at any time during implementation of this Consent Order which it believes warrants more immediate action than the Work Plan or Consent Order may require, or warrants action before an otherwise applicable plan is approved, Respondent shall orally notify the EPA Project Coordinator, or EPA management in his absence, within twenty four (24) hours of discovery and notify both EPA and the State in writing within ten (10) days of such discovery, summarizing the nature, immediacy and magnitude of such threat(s).

46. Proper notification, as required in this section, does not relieve Respondent of any other notification responsibility Respondent may have under any other law, including, but not limited to, Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, et seq., or Section 304 of the Emergency Planning and Community Right to Know Act, as amended, 42 U.S.C. § 11001, et seq.

47. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize and require Respondent to take actions to abate the threat prior to approval of a plan, or in addition to a plan after approval.

48. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Consent Order by reference and are immediately enforceable. EPA will provide to Respondent a written description of such requirements within a reasonable period of time.

X. SITE ACCESS AND SAMPLING

49. Respondent shall provide access to EPA employees, contractors, agents, consultants, designees, representatives, and State of Utah representatives (the "Agencies") to oversee any and all work being performed under this Consent Order. The Agencies will use best efforts to comply with Respondent's health and safety requirements, although compliance with these requirements shall not be a condition of access. Respondent shall provide access to the facility property at any time work is being conducted pursuant to this Consent Order and during reasonable business hours during any period work is not being conducted for the purposes of determining Respondent's compliance with RCRA, the federal and State hazardous waste programs, and this Consent Order. Respondent shall permit the Agencies to inspect work sites and, upon prior notification, inspect and obtain copies of computer files, operating and field logs, photographs, contracts, manifests, shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and interview facility personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs EPA's or the State's statutory authorities to enter and inspect the facility.

50. EPA may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Respondent. Respondent shall notify EPA in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of fourteen (14) days prior to the sampling being conducted, and shall provide split samples to the Agencies upon request. Within a reasonable period of time of collecting and validating it, the Agencies shall provide copies of all validated data to Respondent.

XI. AVAILABILITY AND RETENTION OF INFORMATION

51. Respondent shall make available to EPA, and shall retain, during the pendency of this Consent Order and for a period of three (3) years after its termination, all non-privileged records and documents in its possession, custody, or control, or in the possession, custody or control of its contractors and subcontractors, which relate to the performance of this Consent Order, including but not limited to documents reflecting the results of any sampling, tests, or other data or information generated or acquired by Respondent, or on Respondent's behalf, with respect to the implementation of this Consent Order.

52. At the end of this three-year period and at least thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are subject to destruction, shall make such documents or information available to EPA for inspection and, upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide non-privileged documents and information retained under this section at any time before expiration of the three-year period at the written request of EPA. If Respondent deems any documents or information to be privileged, it shall state the following for each such document: the nature of the document or information (e.g., interoffice memorandum, conversation, report); the title of the document; the author or originator of the document or information; the date of the document or information; and the basis on which the privilege is claimed.

53. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the facility, give written notice to the transferee that the property is subject to this Consent Order. Respondent shall provide written notice to EPA and the State of the conveyance, including the name and address of the transferee, 14 days prior to such conveyance.

54. Respondent may assert confidentiality claims pursuant to 40 C.F.R. § 2.203(b) with respect to part of the information submitted to EPA pursuant to this Consent Order provided such claim is allowed by law. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

55. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to the EPA, the public may be given access to such information without further notice to Respondent.

XII. QUALITY ASSURANCE

56. Within thirty five (35) days after the effective date of this Consent Order, Respondent shall submit for EPA approval a draft Quality Assurance Project Plan ("QAPP"). All sampling and analyses performed pursuant to this Consent Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation,

and chain of custody procedures. Respondent shall ensure that each laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance and is a Utah certified laboratory. All work undertaken pursuant to this Consent Order shall be performed in a manner consistent with EPA Region VIII's Field Sampling Guide and the QA/R-5, *EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations*, Attachments 4 and 5 to this Consent Order, respectively.

57. Respondent shall use quality assurance, quality control, data validation, and chain of custody procedures for all data gathered under this Consent Order in accordance with EPA SW-846, Third Edition, or subsequent edition as then in effect.

58. Respondent shall, upon EPA request, provide for quality assurance monitoring by the laboratory(ies) performing analyses required by this Consent Order. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

59. Respondent and the Agencies shall make available to each other the results of all sampling and/or tests or other data generated by any of them with respect to the implementation of this Consent Order, and Respondent shall submit these results in required progress reports. EPA will comply with all regulatory requirements pertaining to Confidential Business Information as provided for at 40 C.F.R. Part 2.

60. At the request of Respondent or the Agencies, Respondent or the Agencies shall allow split or duplicate samples to be taken by the requestor or their authorized representatives, of any samples collected pursuant to this Consent Order. Each Party shall notify the others no less than fourteen (14) days in advance of any sample collection activity. EPA and the UDSHW shall have the right to take any additional samples that they deem necessary.

XIII. NOTICES

61. Whenever under the terms of this Consent Order, notice is required to be given, and/or a report or other document is required to be forwarded by one Party to another, such correspondence shall be sent by certified mail or hand carried to the following individuals at the addresses specified below. Monthly reports and notifications of emergency situations may be faxed or mailed:

As to the United States:

John Works
Technical Enforcement Program
USEPA Region VIII, 8ENF-T
999 18th Street, Suite 300
Denver, Colorado 80202-2466
Telephone: (303) 312-6196
Fax: (303) 312-6409
works.john@epa.gov

As to the UDSHW:

Mr. Allan Moore
UDEQ, UDSHW
288 North 1460 West
Salt Lake City, Utah 84114-4880
Telephone: (801) 538-6170
Fax: (801) 538-6715
amoore@deq.stat.ut.us

62. If the date for submission of any item or notification required by this Consent Order falls upon a Saturday, Sunday, or federal holiday, the time period for submission of that item or notification is extended to the next federal working day following the weekend or holiday.

XIV. RESERVATION OF RIGHTS

63. Nothing in this Consent Order shall limit the information gathering, access, and response authority of the United States under RCRA or any other applicable law, nor shall it limit the authority of EPA to issue additional orders to Respondent under RCRA Section 7003 as may be necessary. Nothing herein shall limit the power and authority of EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the facility. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action and as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9601, *et seq.*, RCRA, or any other applicable law. Nothing, other than the agreed upon terms of this Consent Order, shall preclude Respondent from exercising any of its rights, causes, claims, or defenses under the law.

64. This Consent Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under the Act, CERCLA or any other applicable law.

65. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any applicable laws and regulations and with any of the requirements of this Consent Order, including but not limited to, the right to disapprove of work performed by Respondent, to request that Respondent perform additional tasks, and the right to perform any portion of the work herein.

66. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligation to comply with the Act and/or any other applicable state or federal law or regulation.

67. By issuance of this Consent Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, heirs, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Consent Order. This Consent Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the work under the terms of this Consent Order. Respondent assumes no liability for injuries or damages to persons or property resulting from any actions or omissions of the Agencies, and Respondent reserves all of its rights, causes, claims and defenses regarding any such injuries or damages.

XV. FORCE MAJEURE

68. Respondent agrees to perform all requirements under this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a force majeure event. For purposes of this Consent Order, a force majeure event is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Consent Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance. Nothing in this Consent Order precludes the parties from extending any of the time frames by mutual agreement; however, such agreement must be memorialized in writing prior to the due dates or within a reasonable time after the due date if the force majeure event occurs on the due date.

69. Respondent shall notify EPA orally within 24 hours after the event, and in writing within five days after Respondent becomes or should have become aware of events which constitute a force majeure event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to

avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by Respondent.

70. If EPA determines a delay in performance of a requirement under this Consent Order is or was attributable to a force majeure event, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Consent Order which are not directly affected by the force majeure event. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision, at which time Respondent may elect to invoke the dispute resolution procedures set forth in Paragraph 74.

XVI. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

71. Within sixty (60) days of the effective date of this Consent Order or prior to beginning Work, whichever is earlier, Respondent shall establish financial assurance in the amount of \$500,000 to assure performance of the Work, using any financial assurance mechanism authorized by 40 C.F.R. Part 264, Subpart H. The amount of financial assurance will be modified as appropriate after the risk assessment addressed in Task 5 of the SOW has been completed.

72. The United States shall not be liable for any injury or damages to persons or property resulting from acts or omissions of Respondent or its contractors in implementing the requirements of this Consent Order.

73. Respondent agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers, successors, or assigns, or any persons including, but not limited to, firms, corporations, subsidiaries, and contractors, in carrying out activities under this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Consent Order.

XVII. DISPUTE RESOLUTION

74. Any disputes concerning activities or deliverables required under this Consent Order shall be resolved as follows: If Respondent objects to any EPA notice of disapproval or requirement made pursuant to this Consent Order, Respondent shall notify EPA's Project Coordinator in writing of its objections within 7 days of receipt of the disapproval notice or requirement. Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent certified mail, return receipt requested. EPA shall respond in writing within 7 days of receipt of Respondent's written objections identifying any potential areas of agreement or disagreement. All writings shall be mailed via overnight mail. However, failure

by EPA to provide the aforementioned response shall not constitute or be construed to be a finding in Respondent's favor. EPA and Respondent then have an additional 14 days to reach agreement. If an agreement is not reached within 14 days, Respondent may request a determination by the Assistant Regional Administrator for ECEJ ("ARA"). All time limitations set forth herein may be modified by mutual agreement of the parties. Respondent may also request a conference with the ARA. The ARA, after any conference requested by Respondent, shall make a final determination. The ARA's determination is EPA's final decision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision, subject to any right Respondent may have under RCRA to contest such decision in any judicial review thereof.

75. The invocation of dispute resolution procedures under this section shall not extend, postpone or affect in any way any obligation of Respondent under this Consent Order not directly in dispute. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 74. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII.

XVIII. FAILURE TO COMPLY

76. For each day, or portion thereof, that Respondent fails to perform fully any requirement of the Consent Order in accordance with the schedule established pursuant to the Consent Order, Respondent shall be liable as follows:

- a. For failure to submit the draft or final work plan, the QAPP, the Health and Safety Plan, or the Completion Report required by this Consent Order, Respondent shall pay a stipulated penalty in the following amounts:

Penalty Per Plan or Report	Period of Noncompliance
\$750	1st through 14th day
\$1,250	15th through 30th day
\$2,500	31st day and thereafter

Failure to incorporate EPA comments on the draft work plan shall be deemed a failure to submit the final work plan.

- b. For failure to submit a progress report, Respondent shall pay a stipulated penalty of \$500 (five hundred dollars) for each monthly report.
- c. For failure to provide the notification required in this Consent Order, Respondent shall pay \$1,000 (one thousand dollars) for each day the notification is late.

- d. For "Work" which has not been completed in a manner satisfactory to EPA, Respondent shall pay a stipulated penalty in an amount equivalent to \$1,000 (one thousand dollars) for each day such failure remains uncured. The determinations of whether the "Work" has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the "Work" shall be subject to the dispute resolution procedures set forth in Paragraph 74.
- e. For failure to complete the phase-out of all IG Farben electrolytic cells at the facility, and eliminate cathode stack emissions and cathode scrubbing system wastewater discharges, as outlined in Task 7 of the SOW, by December 31, 2001, Respondent shall pay \$5,000 (five thousand dollars) for each day such failure remains uncured.
- f. For failure to complete installation of the modified design for all its melt reactor cells, as outlined in Task 7 of the SOW, by May 1, 2002, Respondent shall pay \$5,000 (five thousand dollars) for each day such failure remains uncured.
- g. Stipulated penalties for subparagraphs (a) and (b) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.
- h. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties.
- i. Respondent shall pay stipulated penalties by submitting a cashier's or certified check, payable to "Treasurer, United States of America," to:

Regional Hearing Clerk
U.S. EPA, Region VIII
P.O. Box 360859M
Pittsburgh, PA 15251

Respondent shall provide copies of the checks to:

Regional Hearing Clerk
U.S. EPA, Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

and

Andrew Lensink, 8ENF-L
Legal Enforcement Program
U.S. EPA, Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

- j. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. The treasury tax and loan rate will be in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of twelve (12) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid in accordance with 4 C.F.R. § 102.13(d) and (e).

XIX. MODIFICATIONS TO APPROVED WORK PLAN OR SCHEDULE

77. Modifications to any plan or schedule or the SOW, consistent with the scope of work designated in the SOW or as agreed to by Respondent and EPA, may be made in writing by EPA or at EPA's oral direction. EPA will memorialize oral modifications in writing within a reasonable period of time; provided, however, that the effective date of the modification shall be the date of the EPA's oral direction. Any other requirements of the Consent Order may be modified in writing by mutual agreement of the parties.

78. If Respondent seeks permission to deviate from any approved Work Plan or schedule or the SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed Work Plan modification and its basis. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of any obligation to obtain such formal approval as may be required by the Consent Order and to comply with all requirements of the Consent Order unless it is formally modified.

XX. ISSUANCE, EFFECTIVE AND TERMINATION DATES

79. This Consent Order shall be issued on the day it is filed with the Regional Hearing Clerk. The Consent Order shall become effective subject to the provisions of Section XXI (Public Comment).

80. Modifications made by EPA to this Consent Order are effective on the date such modification is filed with the Regional Hearing Clerk, so long as Respondent is sent a copy by

certified mail or has hand delivered to it a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

81. This Consent Order shall terminate upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the requirements of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, but not including record retention, have been satisfactorily completed.

XXI. PUBLIC COMMENT

82. Pursuant to Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), EPA will announce the availability of this Consent Order to the public for review and comment. EPA will accept comments from the public for a period of thirty (30) days after such announcement. If sufficient interest warrants, as determined by EPA, a public meeting will be held. At the end of the comment period, EPA will review all comments received during the comment period and/or at any public meeting. EPA will forward to Respondent a copy of all such comments and EPA's written response to such comments, whereupon Respondent shall have seven (7) days to submit a response to EPA. EPA shall then either:

- a. determine that the Consent Order should be made effective in its present form and notify Respondent of the effective date; or
- b. determine that modification of the Consent Order is necessary, in which case Respondent shall be informed as to the nature of all required changes. If Respondent agrees to the modifications, the Consent Order shall be so modified, signed by the parties, and entered with the Regional Hearing Clerk.

XXII. ATTACHMENTS AND DELIVERABLES

83. All attachments to the Consent Order listed below are incorporated by reference. Attachments to this Consent Order are:

- Attachment 1 - Statement of Work
- Attachment 2 - Schedule
- Attachment 3 - EPA Standard Operating Safety Guide
- Attachment 4 - EPA Region VIII Field Sampling Guide
- Attachment 5 - Quality Assurance R5

In the Matter of: Magnesium Corporation of America
Proceeding Under Section 7003 of the Solid Waste Disposal Act, as
Amended, 42 U.S.C. § 6901 et seq., 42 U.S.C. § 6973

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION VIII
Complainant**

Date: 06-21-01

By: Sharon L. Kercher
for Sharon L. Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 6/21/01

By: Michael T. Risner
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

RESPONDENT, Magnesium Corporation of America

Date: 6/15/01

By: Michael H. Legge
Michael H. Legge, President

JUN 22 2001

Issuance Date

Attachment 1 to Administrative Order on Consent

STATEMENT OF WORK
AT
MAGNESIUM CORPORATION OF AMERICA.
"MAGCORP"
ROWLEY, UTAH, FACILITY

I. PURPOSE

The purpose of this Statement of Work ("SOW") is to outline remedial measures (the "Work"), including the tasks and requirements of the characterization at the MagCorp facility (the "facility") in Rowley, Utah. This SOW is incorporated by reference into the Consent Order in In the Matter of: Magnesium Corporation of America, EPA Docket No. RCRA-8-2000-16.

II. SITE SPECIFIC INFORMATION

II.1 Site Location and Background

The facility owned by MagCorp ("Respondent") is located at Rowley, Utah, fifteen miles north of Exit 77 from Interstate 80 west. The facility produces magnesium using an anhydrous electrolytic production process. In addition to magnesium metal and alloys, the facility produces chlorine, ferric and ferrous chloride, and calcium chloride, and is producing or has produced other materials as well. The main raw material is concentrated brine from the Great Salt Lake.

The facility discharges waste from production processes into ditches which aggregate into one ditch, the "Main Ditch (which has also been called the Red River Ditch)," which flows into a four hundred (400)-acre process wastewater pond ("wastewater pond") with a pH of approximately one (1). The western ditch (which has also been called the center ditch and the central ditch), which flows into the Main Ditch, has been dredged periodically and the dredged material (spoils) placed along its sides. The western ditch, ditch spoils, sewage lagoon, the unpaved road parallel to and immediately west of the western ditch, the soils between the road and western ditch, and surficial soils surrounding the ditch spoils immediately to the east of the western ditch, are hereinafter referred to collectively as the "Site."

II.2 Current Situation

The Utah Division of Air Quality sampled MagCorp's western ditch in September 1998. MagCorp analyzed split samples from this sampling effort. Elevated levels of dioxin, furans, and hexachlorobenzene ("HCB") were detected in the ditch sediment. MagCorp conducted further sampling of the ditch sediment and the associated ditch spoils in October and December 1998.

EPA Region VIII collected samples of the western ditch sediment and ditch spoils in August 1999. Elevated levels of HCB were detected in these samples.

Dioxin, furans, and HCB are produced in MagCorp's production processes and subsequently discharged to the western ditch and wastewater pond. These contaminants are part of the wastes which are discharged to the ditches and wastewater pond.

III. SCOPE OF WORK

To assess and address the threat to worker health from past and ongoing releases of dioxin, furans, and HCB and to mitigate the effects of future releases, Respondent shall perform the following tasks discussed below. The tasks shall be performed in accordance with the schedule, Attachment 2 to the Consent Order.

III.1 Task 1: Fence Ditch with Temporary Fencing/Erect Signs

Within twenty one (21) days of the effective date of the Consent Order, Respondent shall fence the western ditch with temporary fencing. Also, Respondent shall post around the western ditch and current wastewater pond signs stating "Danger - Unauthorized Personnel Keep Out." These signs must be legible from a distance of at least twenty five (25) feet from each sign. Signs shall be at a maximum spacing of two hundred and fifty (250) feet. The signs may be in English, but at a minimum, one sign at or near the entry point to the Site, shall be in both English and Spanish.

III.2 Task 2: Work Plan

Within thirty five (35) days of the effective date of the Consent Order, Respondent shall submit a Work Plan in triplicate to EPA for review and approval. The Work Plan shall include the sections and documents specified in Section IV of the SOW, describe the manner in which the Respondent intends to accomplish the tasks set forth in the SOW, and the technical approach to implementation of the tasks set forth in the SOW.

III.3 Task 3: Assessment of Current Site Access/Fence Condition

Respondent shall assess the location and current condition of the process area fencing and barriers per the schedule in Attachment 2. This assessment shall identify the points of entrance for cattle and human trespassers to access the interior process areas and waste disposal units and appurtenances.

Respondent shall prepare and submit to EPA for approval a report and site map identifying current fencing and barriers, including a proposal for additional fencing/barriers or repair or replacement of existing fencing or barriers as necessary to eliminate access by cattle and inadvertent trespassing human receptors. This report shall be due to EPA within fourteen (14) days of approval of the Work Plan. Respondent shall begin implementation of the proposal within ten (10) days after it is approved by EPA. A completion notification shall be included in the first periodic report due following Task 3 completion.

III.4 Task 4: Characterization

Respondent shall develop and submit to EPA for approval a sampling plan to characterize the area described in Section II.1 as the "Site." The number and location of samples shall be such that the extent and concentration of the dioxin, furan, and HCB contamination, can be assessed.

Respondent shall obtain ditch, ditch spoil, and soil samples from a statistically valid sampling grid and adjacent soils in the predominantly downwind direction, the prevailing wind direction to be based upon weather data as approved by EPA. Surficial soil samples shall be collected from the zero (0) to three (3) inch interval on a statistically valid grid and in consideration of the predominant wind direction.

The proposed characterization shall utilize SW-846 methods for dioxin/furan, HCB, and soil pH. The proposed sampling plan is due no later than forty five (45) days following approval of the Work Plan. Respondent shall implement the proposed work according to the approved plan and schedule no later than thirty (30) days after EPA approval. Respondent will submit the sample results as part of the Task 5 proposal.

III.5 Task 5: Human Health and Ecological Risk Assessment

Based on the results of Task 4, Respondent shall perform a human health and ecological risk assessment for the area defined in Section II.1 as the "Site." The risk assessment shall primarily evaluate risk to the environment and industrial workers at Respondent's facility from all dioxins, furans, and HCB that are site related, as well as considering risk to other exposed receptors on- or off-site. An ecological risk assessment component shall be included as part of the overall risk assessment. Potential exposure routes for workers and other receptors at the ditch/spoils area include incidental ingestion of and dermal contact with soil, and inhalation of fugitive dust from the Site. The risk assessment shall be conducted in accordance with applicable EPA guidance and in consideration of Utah Administrative Rule R315-101. The initial/screening risk assessment shall be conducted using the standard default factors for applicable exposure scenarios. Thereafter, site specific data may be used if EPA, in consultation with the Utah Division of Solid and Hazardous Waste ("UDSHW"), reviews and approves, in accordance with applicable risk assessment guidances, the assumptions and parameters used to establish the site specific data. Upon approval, site specific data may be used in place of the standard default data cited in Utah Administrative Rule R315-101. If site specific data are to be collected, then all site sampling plans and protocols shall be approved by EPA, in consultation with UDSHW, prior to any such sampling, analysis, and inclusion of that information in the risk assessment. Respondent may use a tiered approach to risk assessment evaluation by progressing from deterministic to probabilistic analyses and/or by collecting additional data to fill major data-gaps in the risk assessment. Respondent shall not use the probabilistic technique in lieu of the deterministic technique. If probabilistic techniques are agreed upon by EPA, in consultation with UDSHW, they shall be conducted in accordance with EPA's *Policy for Use of Probabilistic*

Analysis in Risk Assessment, EPA/630/R-97/001. Data from suitable reference areas may be considered for both the risk assessment and for determining the nature and extent of contamination.

III.6 Task 6: Remedial Action

If the Risk Assessment Report performed in Task 5 determines that the risk to human health or the environment exceeds acceptable levels, Respondent shall submit to EPA for approval a proposal for remedial action necessary to protect human health and the environment to such acceptable levels. The proposal may include on- or off-site actions and/or appropriate engineering or institutional controls to control the risks. Such methods may include without limitation excavation, application of dust suppressants, road closures adjacent to the ditch and employee training and work practice requirements. Respondent shall submit this proposal within twenty-one (21) days after receiving EPA approval of a risk assessment report that concludes remedial action is necessary. If necessary, the proposal shall include a schedule for implementing the work.

III.7 Task 7: Control and Evaluation of Sources of Dioxin, Furans, and HCB

Respondent shall take the following actions to control and evaluate potential sources of dioxins, furans, and HCB which may be contained in waste generated at Respondent's facility.

- A) Respondent has completed the phase-out of all IG Farben electrolytic cells at the facility, which was expected to eliminate cathode stack emissions and cathode scrubbing system wastewater discharges. Within 15 days of the effective date of the Order, Respondent will verify in writing that cathode stack emissions and cathode scrubbing system wastewater discharges have in fact been eliminated.
- B) Respondent has completed installation of the modified design for all of its melt reactor cells. Within 30 days after approval of the Work Plan, Respondent shall submit to EPA a description of the modified design for the melt reactor cells. This modified design shall be entitled to protection as confidential business information under 40 C.F.R. Part 2.
- C) Within 30 days after completion of Task 7(B), Respondent shall submit to EPA for review and approval a proposal and schedule for evaluating the emissions of dioxin, furan, and HCB formation in sealed and new M-type electrolytic cells and the modified melt reactor cells. The proposal will identify sampling locations, sampling methods, analytical methods and other appropriate actions to perform the evaluation.
- D) Within 30 days after completion of Task 7(B), Respondent shall submit to EPA for review and approval a proposal and schedule for conducting a facility-wide evaluation of potentially significant sources of dioxin, furan, and HCB formation from processes at the facility where a waste is produced and the conditions for possible formation of these

substances exists (i.e., temperatures between 450-650°F in the presence of carbon, chlorine and oxygen), other than vehicle emissions, fuel combustion and the electrolytic/melt reactor cells evaluated under Task 7(C).

IV. DOCUMENTS REQUIRED

The following key planning requirements/documents shall be developed for the Work Plan:

IV.1 Project Management and Personnel Qualifications

Respondent has responsibility for selecting contractors to do the Work with the exceptions noted above. The Work Plan shall provide a list of Respondent's employees and/or the contractors' employees who will be assigned key roles in conducting the Work. Changes in staffing of these key roles during the Work shall be preceded by notice in writing delivered to EPA one week in advance of the anticipated change.

Employees shall have appropriate training, experience, and capabilities to perform the Work. Key employees' qualifications shall be listed in the Work Plan. EPA has the right to disapprove of a contractor pursuant to paragraph 41 of the Order. If EPA disapproves of a contractor, it will state the reasons for the disapproval, and Respondent will notify EPA of a replacement within ten (10) days of EPA's written notice.

IV.2 Quality Assurance and Quality Control ("QA/QC") and Data Validation.

EPA requires that certain documents be developed and approved by EPA before field activities can be initiated. These plans include the Quality Assurance Project Plan ("QAPP") and the Health and Safety Plans ("HASP").

In developing the QAPP and HASP, Respondent shall consider and utilize the following EPA guidance documents: Field Sampling Guide, Standard Operating Safety Guide and the QAR5. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration regulations found at 29 C.F.R Part 1910 and as adopted by Utah.

IV.3 Data Validation

All data generated during the Work shall be validated. The data validation procedures and levels which must be integrated with the EPA Quality Assurance ("QA") program's requirements are described in detail in the ERB Region VIII QAPP or its appropriate references.

IV.4 Document Control

Documents and information generated during the Work shall be consistently well managed. A complete and accurate Site file for this project shall be maintained by the Respondent. The Site file includes records, documents, and information generated in performance of the Work.

IV.5 Reporting

After the date of receipt of EPA's approval of the Work Plan through completion of the Work, Respondent shall submit monthly status reports to EPA mailed or faxed fifteen (15) days after the last day of each month. The reports shall follow a standard format that consists of the topics on the following list:

- * Progress made this reporting period;
- * Problems and resolved solution;
- * Sampling/laboratory activities: samples collected, analyses requested, and analytical results received;
- * Deliverables submitted;
- * Personnel or schedule changes; and,
- * Activities planned next reporting period.

Upon completion of the Work, a final report summarizing the Work conducted pursuant to the Order shall be prepared as required by paragraph 44 of the Consent Order and delivered to EPA.

Attachment 2 to Administrative Order on Consent

SCHEDULE

Respondent shall adhere to the following schedule for all tasks required by the Consent Order.

- * Task 1: Erect Signs/Fence Ditch
 - Implement within 21 days of effective date of Order
- * Task 2: Submission of Work Plan for Review (Including QAPP and HASP)
 - Submit within 35 days of effective date of Order
- * Task 3: Assessment of Current Site Access/Fence Condition
 - Submit Proposal for assessing current site access and fence conditions within 14 days after Work Plan approval
 - Implement within 10 days of EPA approval of Proposal
- * Task 4: Characterization
 - Submit Characterization Proposal within 45 days after Work Plan approval
 - Implement within 30 days of EPA approval of Characterization Proposal
 - Submit results as part of Task 5 Characterization Proposal
- * Task 5: Risk Assessment
 - Submit Risk Assessment Report within 30 days after receiving Task 4 Final Analytical Results and QA/QC
 - Submit sample results (from Task 4) with Risk Assessment Report
- * Task 6: Remedial Action
 - If warranted, submit Remedial Action Proposal with schedule within 21 days of receiving EPA approval of Risk Assessment Report that concludes remedial action is necessary as part of Task 4
 - Begin implementation of Remedial Action Plan within 10 days of EPA approval of proposal
- * Task 7:
 - Submit written verification that cathode stack emissions and cathode scrubbing system wastewater discharges have in fact been eliminated within 15 days of effective date of order
 - Submit description of the modified design for the melt reactor cells within 30 days after EPA approval of the Work Plan
 - Submit proposal and schedule for evaluating the emissions of dioxin, furan, and HCB formation in sealed and new M-type electrolytic cells

and modified melt reactor cells within 30 days after completion of Task 7 (B)

*

Reporting:

- Submit monthly progress report 15 days after last day of each month after EPA approval of Work Plan, as required at paragraph IV.5
- Prepare Completion Report within 30 days of completion of last task under the Statement of Work

EXHIBIT B

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

Docket No. RCRA-8-2001-05

15 PM 1:30
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

Magnesium Corporation of America

Rowley, Tooele County, Utah

Respondent.

PROCEEDING UNDER SECTION 7003
OF THE SOLID WASTE DISPOSAL ACT,
AS AMENDED, 42 U.S.C. § 6901 et seq.,
42 U.S.C. § 6973

ADMINISTRATIVE ORDER

I. JURISDICTION

1. EPA has the authority to issue this Administrative Order ("Order") pursuant to Section 7003(a) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act, as amended by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (hereinafter referred to as "RCRA" or the "Act"), 42 U.S.C. § 6973(a) ("Section 7003"). The authorities vested in the Administrator pursuant to RCRA have been properly delegated to the undersigned officials.

2. Magnesium Corporation of America ("Respondent" or "MagCorp") shall undertake all actions required by the terms and conditions of this Order and the attached Statement of Work ("SOW"), Attachment 1, which by this reference is incorporated in this Order.

II. INTRODUCTION

3. This Order is issued by the United States Environmental Protection Agency Region VIII ("EPA"). This Order concerns the performance of Work at the Rowley, Utah production facility owned and operated by Respondent.

4. MagCorp is a corporation incorporated in the State of Delaware with its principal place of business in the State of Utah.

5. Respondent is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15).

6. Respondent has contributed or is contributing to the "past or present handling, storage, treatment, transportation, or disposal of ... solid waste or hazardous waste" within the meaning of Section 1004 (5) and (27) of the Act, 42 U.S.C. § 6903 (5) and (27), at the facility located approximately fifteen miles north of Exit 77 from Interstate 80 at Rowley, Utah (the "facility").

7. Tetrachlorodibenzo-p-dioxins and various other dioxins, hexachlorobenzene ("HCB"), polychlorinated biphenyls ("PCBs"), arsenic, and chromium are hazardous constituents as provided for at 40 C.F.R. Part 261, Appendix VIII, and Utah Admin. R. R315-50-10 and hazardous substances as provided for at CERCLA § 101(14), 42 U.S.C. § 9614(14), and 40 C.F.R. § 302.4. Solid waste containing HCB at 0.13 milligrams/liter ("mg/L"), arsenic at 5.0 mg/L, or chromium at 5.0 mg/L after use of the Toxicity Characteristic Leaching Procedure is also a RCRA "characteristic" hazardous waste. 40 C.F.R. § 261.24 and Utah Admin. R. R315-2-9(g). Anode dust analyzed using the Toxicity Characteristic Leaching Procedure contained arsenic and chromium in excess of the regulatory limit. Waste in the central sump analyzed using the TCLP contained chromium in excess of the regulatory limit.

8. The past or present handling of hazardous or solid waste, including anode dust, at the facility may present an imminent and substantial endangerment to health or the environment.

9. Pursuant to Section 7003(a) of the Act, 42 U.S.C. § 6973(a), EPA has notified the State of Utah of this action.

10. EPA has determined that issuing this Order pursuant to RCRA Section 7003, 42 U.S.C. § 6973, is necessary to protect health or the environment.

III. PARTIES BOUND

11. This Order shall apply to and be binding upon Respondent and its officers, employees, agents, successors and assigns.

12. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within two (2) days after the effective date of this Order or date of such retention and shall condition all such contracts on compliance with the terms of this Order.

13. Respondent shall give notice to EPA thirty (30) or more days prior to transfer of ownership or operation of the facility. Unless agreed to by EPA, any such transfer shall not alter Respondent's obligations under this Order.

IV. FINDINGS OF FACT

General Findings of Fact

14. The Findings of Fact set forth in Administrative Order on Consent, Docket No. RCRA-8-2000-16 ("Consent Order") are incorporated herein.

15. Respondent is a corporation incorporated in the State of Delaware, with its principal place of business in the State of Utah.

16. Respondent has owned and operated the facility since 1980. Amax Specialty Metal owned Respondent's stock prior to 1989, and during that time Respondent did business under the name Amax Magnesium. In 1989, Amax Specialty Metal sold Respondent's stock to Renco Metals, Inc., which changed Respondent's name to Magnesium Corporation of America, or MagCorp.

17. The facility is located at Rowley, Tooele County, Utah, in Township 2N, Range 8W, Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, and 16, at longitude 112 degrees 44 minutes west, latitude 40 degrees 55 minutes north.

18. The mailing address of the facility is 238 North 2200 West, Salt Lake City, Utah 84116.

19. The facility produces magnesium using an anhydrous electrolytic production process. In addition to magnesium metal and alloys, the facility produces chlorine, ferric and ferrous chloride, and calcium chloride, and is producing or has produced other materials as well. The main raw material is concentrated brine from the Great Salt Lake.

20. The facility discharges wastes from production processes into several ditches, including the "western" (also called the "center" or "central" ditch) and the "chlorine" ditches, all of which aggregate into a ditch, the "Main" ditch (also called the "Red River"), that flows into an unlined 400-acre pond. The pond has a pH of approximately 1.

21. On January 16, 2001, the United States filed a complaint in the United States District Court for the District of Utah, Central Division (United States v. MagCorp, et al., Civil No. 2:01CV0040B), alleging that MagCorp generates, treats, stores, and/or disposes five different hazardous wastes in violation of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, including Pentapure Solid (called "Anode Dust" in this Order), High Energy Scrubber waste, Chlorine Plant Wash Water Column, Chlorine Reduction Burner waste, and Ferric/Ferrous Chloride Solid wastes. Ferric Chloride wastes contain arsenic and both Ferric Chloride and Anode Dust wastes contain chromium in concentrations beyond the regulatory limits and are therefore hazardous wastes. Waste in the central sump contains chromium in a concentration beyond the regulatory limit and is therefore a hazardous waste. 40 C.F.R. § 261.24 and Utah Admin. R. R315-2-9(g).

High Energy Scrubber, Chlorine Plant Wash Water Column, and Chlorine Reduction Burner wastes are hazardous because they are aqueous and have a pH of less than 2. 40 C.F.R. § 261.22 and Utah Admin. R. R315-2-9(e).

22. On October 1, 2000, EPA Region VIII and MagCorp entered into the Consent Order under which MagCorp agreed to undertake various tasks to determine whether solid waste containing dioxins, furans, and HCB is being released at the facility, and whether these compounds may be found in the area of the western ditch, ditch spoils, the sewage lagoon, the unpaved road parallel to and immediately west of the western ditch, the soils between the road and western ditch, and surficial soils surrounding the ditch spoils immediately to the east of the western ditch. The Consent Order also provides for fencing of the area.

23. In general, MagCorp's manufacturing operations include removing minerals from, *inter alia*, Great Salt Lake surface waters and groundwater brines by concentrating the waters in solar evaporating ponds and in concentrator tanks which utilize waste heat from other facility processes; treating the concentrated brine to remove potassium, boron and sulfates; spray drying the brine to produce an impure anhydrous magnesium-rich powder; melting and chlorinating the powder to convert the magnesium oxide in the powder into magnesium chloride; separating the molten magnesium metal from chlorine gas by electrolysis; casting the magnesium into desired products; and capturing, and recycling or selling, chlorine gas and hydrochloric acid generated in the electrolytic refining process.

24. The electrolysis is performed in electrolytic cells. The off-gases from electrolysis carry dust which EPA sampling shows is laden with HCB, dioxins, furans, PCBs, arsenic, and chromium. These contaminants settle out as particulates as the gas passes through the ducts. The dust is cleared from the equipment by a drag chain which operates continuously. The chain moves the dust to an "anode box" which is emptied on a daily basis manually by employees into a concrete sump directly beneath the anode box.

25. On January 12-13, 2001, EPA sampled anode dust from electrolytic cells in buildings 3 and 4. The dust from electrolytic cells in the two buildings passes through separate vent systems to separate anode boxes, one box for each building. The boxes are emptied into separate sumps, one for each box. Dust from the sumps is washed with water to a central, or main, sump which empties into the ditch system. EPA also sampled the central sump and various locations in the ditch system. Results for the sampling were as follows:

Sampling Event of January 12-13, 2001	Building 3 Anode Dust	Building 4 Anode Dust	Main Sump	Dredge Spoils	Dredge Spoils (Dup)	Liquor Outfall	Culvert	Outfall Central Ditch
Dioxin/Furans (ug/kg)*	5.4	4.6	41	11	8.5	16	25	85
Polychlorinated Biphenyls (mg/kg)	11 E	600 E	520 E	NA	NA	22 E	NA	NA
Hexachlorobenzene (total) (mg/kg)	44	12,000	8,900	82	9.2	640	520	1,000
Arsenic (total) (mg/kg)	26	130	NA	11	12	25	14	60
Chromium (total) (mg/kg)	94	230	NA	14	12	12	12	16
Arsenic (TCPL) (mg/L)	ND	5.0	NA	ND	NA	ND	ND	ND
Chromium (TCPL) (mg/L)	1.1	9.3	NA	0.55	NA	0.0058	ND	ND

*TEQ-adjusted concentration. The term "dioxin" includes "furans" which are any of a class of compounds containing a ring composed of one oxygen and four carbon atoms. EPA has developed a "toxicity equivalence quotient" ("TEQ") that estimates the toxicity of all other chlorinated dioxins and furans relative to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin ("2,3,7,8 TCDD"). Using the TEQ schemes, the toxicity of all the dioxins and furans in a sample can be converted into units of 2,3,7,8-TCDD. When this Order refers to "dioxin," it is to total dioxin TEQ.

E The value is greater than the highest linear standard and is estimated.

NA Not analyzed.

ND Not detected.

26. Observations of inspectors who performed the January 12-13, 2001 inspection have been recorded in reports and memoranda which have been placed in the administrative record underlying this Order. The index of the administrative record and documents in the administrative record are on file in the EPA Region VIII office and will be made available for inspection there. An inspection was performed at the facility by Utah Occupational Safety and Health ("UOSH") inspectors on May 25, 2001. EPA inspectors accompanied the UOSH inspectors and have recorded observations in a report which has been placed in the administrative record underlying this Order. EPA took samples from the anode boxes from buildings 1 and 4 on May 25, 2001, but has not yet received final analytical results from its sampling.

27. MagCorp workers are exposed to chlorine gas at various locations throughout the facility during their work day. The gas is irritating to lungs, eyes, skin, and mucous membranes. This constant exposure to chlorine gas makes it more likely the workers will suffer adverse health effects from exposure to HCB, dioxins, furans, PCBs, arsenic, and chromium.

28. HCB, dioxins, furans, and PCBs are found at various locations throughout the facility as can be seen from the analytical data from the January 12-13, 2001 sampling event, and from the August 30-September 2, 1999 sampling event. Workers may thus be exposed to these contaminants all day, each day they work at the facility.

29. Results from sampling performed August 31-September 2, 1999 show the concentration of chromium in the central sump after TCLP testing was 5.69 mg/L.

Findings of Fact Regarding Effects on Human Health

30. Workers who empty the anode boxes may suffer serious adverse health effects from exposure to HCB, dioxins, furans, PCBs, arsenic, and chromium in the dust. These effects may be exacerbated by exposure to chlorine gas throughout the facility and to the same contaminants at other locations at the facility as the workers perform their tasks. This is supported by the report prepared by a toxicologist entitled, Toxicological Evaluation and Risk Assessment of MagCorp Workers at Building 4 Anode Box, June 8, 2001. This report has been placed in the administrative record underlying this Order.

Hexachlorobenzene

31. HCB is persistent in the environment due to its chemical stability and resistance to microbial degradation. HCB adheres strongly to soils and does not migrate readily into groundwater. HCB is lipophilic (attracted to fatty tissue) and can bioaccumulate. Exposure to HCB may cause eye, skin, and respiratory tract irritation. Long-term oral exposure has been reported to cause liver disease with associated skin lesions in humans. Effects on the liver, skin, kidneys, immune system, and blood from oral exposure to HCB have been observed in animal studies. Breathing HCB can irritate the nose, throat, and lungs; contact can cause eye and skin irritation and may burn the skin. Animal studies have reported cancer of the liver, thyroid, and kidney from oral exposure to HCB. EPA has placed HCB in Group B2: Probable human carcinogen, meaning that evidence for the carcinogenicity of HCB in humans is based primarily on animal studies. *See, Guidelines for Carcinogen Risk Assessment*, 51 F.R. 33992, 34000 (September 24, 1986).

Dioxin

32. The term "dioxin" can refer to 2,3,7,8 tetrachlorodibenzo-p-dioxin ("2,3,7,8 TCDD"), or more commonly to a family of compounds that includes 75 chlorinated dibenzo-p-dioxins and the 135 closely related chlorinated dibenzofurans. 17 members of this family exhibit toxicity similar to 2,3,7,8 TCDD and are commonly referred to as dioxins or dioxin like compounds. Dioxins are persistent in the environment due to their chemical stability and resistance to microbial degradation. Dioxins adhere strongly to soils and do not migrate readily into groundwater. Dioxins are lipophilic and bioaccumulate. 2,3,7,8-TCDD is classified as a human carcinogen by the International Agency for Research on Cancer and by the National Toxicology Program. Dioxins also cause non-cancer effects, including developmental and reproductive effects, endocrine disruption, and suppression of the immune system.

Polychlorinated biphenyls

33. PCBs are persistent in the environment due to their chemical stability and resistance to microbial degradation. PCBs adhere strongly to soils and do not migrate readily into groundwater. PCBs are absorbed through ingestion, inhalation, and dermal exposure. PCBs are lipophilic and can bioaccumulate. There is clear evidence that PCBs cause cancer in animals and it is highly likely they pose a risk of cancer to humans. Studies of PCB workers found increases in rare liver cancers and malignant melanoma. The presence of cancer in the same target organ (liver) following exposures to PCBs both in animals and in humans and the finding of liver cancers and malignant melanomas across multiple human studies adds weight to the conclusion that PCBs are probable human carcinogens.

Studies in monkeys and other animals have revealed a number of serious effects on the immune system following exposures to PCBs, including a significant decrease in size of the thymus gland (which is critical to the immune system) in infant monkeys, reductions in the response of the immune system following a challenge with sheep red blood cells (a standard laboratory test that determines the ability of an animal to mount a primary antibody response and develop protective immunity), and decreased resistance to Epstein-Barr virus and other infections in PCB-exposed animals. PCB exposures were found to reduce the birth weight, conception rates, and live birth rates of monkeys and other species and PCB exposure reduced sperm counts in rats. Effects in monkeys were long-lasting and were observed long after the dosing with PCBs occurred. Children born to women who worked with PCBs in factories showed decreased birth weight and a significant decrease in gestational age with increasing exposures to PCBs. Newborn monkeys exposed to PCBs showed persistent and significant deficits in neurological development, including visual recognition, short-term memory and learning. Studies in humans have suggested effects similar to those observed in monkeys exposed to PCBs, including learning deficits and changes in activity associated with exposures to PCBs.

Chromium

34. The U.S. Department of Health and Human Services has determined that chromium and certain chromium compounds are known carcinogens. Long-term exposure of workers to airborne levels of chromium higher than those in the natural environment has been associated with lung cancer. Lung cancer may occur long after exposure to chromium has ended. Although it is not clear which form of chromium is responsible for this effect in workers, only compounds of chromium(VI) have been found to cause cancer in animal studies. Based on evidence in humans and animals, compounds of chromium(VI) should be regarded as probable cancer-causing substances in humans exposed by inhalation. Evidence for other chromium compounds is inconclusive. Inhalation exposure to chromium may result in additional adverse effects on the respiratory system and may affect the immune system. Whether the effects on the immune system seen in experiments with animals would change a person's resistance to disease is not known.

Arsenic

35. The U.S. Department of Health and Human Services has determined that arsenic and certain arsenic compounds are known carcinogens. Inorganic arsenic has been recognized as a human poison since ancient times, and large doses can produce death. Lower levels of exposure may produce injury in a number of different body tissues or systems: these are called "systemic" effects. When taken by mouth, a common effect is irritation of the digestive tract, leading to pain, nausea, vomiting, and diarrhea. Other effects typical of exposure by mouth include decreased production of red and white blood cells, abnormal heart function, blood vessel damage, liver and/or kidney injury, and impaired nerve function causing a "pins-and-needles" feeling in the feet and hands. There is evidence from animal studies that high oral doses during pregnancy may be damaging to the fetus, but this has not been well studied in humans.

Perhaps the single most characteristic systemic effect of oral exposure to inorganic arsenic is a pattern of skin abnormalities including the appearance of dark and light spots on the skin, and small "corns" on the palms, soles, and trunk. While these skin changes are not considered to be a health concern in their own right, some of the corns may ultimately progress to skin cancer. In addition, arsenic ingestion has been reported to increase the risk of cancer inside the body, especially in the liver, bladder, kidney, and lung. Inhalation exposure to inorganic arsenic dusts or fumes sometimes produces the same types of systemic health effects produced by oral exposure. However, this is not common, and the effects are usually mild. Of much greater concern is the ability of inhaled arsenic to increase the risk of lung cancer. This has been observed mostly in humans exposed to high levels of airborne arsenic in or around smelters, but lower levels may increase lung cancer risk as well.

Direct dermal contact with arsenic compounds, frequently from inorganic arsenic dusts in air, may result in mild to severe irritation of the skin, eyes, or throat.

V. CONCLUSIONS OF LAW

36. Respondent is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15).

37. Wastes generated at the facility and managed in the ditch and pond system at the facility are hazardous wastes and solid wastes as defined in Section 1004(5) and (27) of the Act, 42 U.S.C. § 6903(5) and (27).

38. Respondent has contributed and/or is contributing to the past or present handling, storage, treatment, transportation or disposal of solid or hazardous waste at the facility within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.

39. The past or present handling of solid waste at the facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.

VI. ORDER

40. Based on the above, EPA has determined that the activities required by this Order and the SOW, Attachment 1, are necessary to protect health or the environment. Respondent shall perform the work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order, including all documents incorporated herein pursuant to this Order, and all applicable laws.

41. All plans and documents submitted under any section of this Order shall, upon approval by EPA, be incorporated by reference into this Order as if set forth fully herein.

42. Respondent shall obtain any permits or approvals that are necessary to perform work on or outside the facility under applicable law and shall submit timely applications and requests for any such permits and approvals.

VII. WORK TO BE PERFORMED

43. Based upon the foregoing findings of fact, conclusions of law, and determinations, Respondent shall perform the following work:

44. Respondent shall designate a Project Coordinator responsible for administration of all Respondent's actions required by this Order. Within one (1) day of the effective date of this Order, Respondent shall submit the designated Project Coordinator's name, address, and telephone number in writing to EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by Respondent. Respondent shall retain a different Project Coordinator within five (5) days following EPA's disapproval of a Project Coordinator and shall submit the coordinator's name, address, telephone number, and qualifications to EPA. EPA has designated John Works, of the Office of Enforcement, Compliance and Environmental Justice, as its Project Coordinator. Respondent shall direct all submissions required by the Order to the State of Utah, through the Utah Division of Solid and Hazardous Waste ("UDSHW"), UOSH, and to EPA. Submissions to EPA shall be directed to:

John Works, 8ENF-T
U.S. EPA, Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: (303) 312-6196
Fax: (303) 312-6409

and for UDSHW all submissions shall be directed to:

Mr. Allan Moore
Utah Department of Environmental Quality
UDSHW
288 North 1460 West
Salt Lake City, Utah 84114-4880
Telephone: (801) 538-6170
Fax: (801) 538-6715

Respondent will be informed of a contact at UOSH.

45. Within one (1) day of the effective date of this Order, Respondent shall notify EPA in writing of the name, address, and telephone number of the contractor it has retained to perform the work outlined in the SOW, Attachment 1. Respondent shall notify EPA of the name(s) and qualifications of any other contractor(s) retained to perform work under this Order at least five (5) days prior to the commencement of any task outlined in the SOW. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor within five (5) days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within five (5) days of EPA's disapproval.

46. As provided in the SOW, Attachment 1, Respondent shall submit to EPA for approval draft Work Plans, as necessary, for performing the various tasks on the schedules designated in the SOW. The draft Work Plans shall provide descriptions of and schedules for the actions required in the SOW. EPA may approve, disapprove, require revisions to, or modify any draft Work Plan and its required submittals. If EPA requires revisions to any Work Plan, Respondent shall submit a revised draft Work Plan within four (4) days of receipt of EPA's notification of the required revisions. Thereafter, EPA may approve, approve with modifications, or disapprove and draft the Work Plan. Respondent shall implement the Work Plans and required submittals as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, approved with modifications, or drafted by EPA, the Work Plans, the task proposals required in the SOW, and any other Work Plan submittals, the schedule, and any subsequent modifications shall be fully incorporated into and enforceable under the Order. Respondent shall not commence or undertake any Work onsite without prior EPA approval.

VIII. SITE MONITORING AND REPORTING

47. Progress Reports. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every Monday beginning after the effective date of the Order until completion of all tasks required by the SOW. These reports shall follow a standard format that consists of the topics on the following list: a) activities accomplished and progress made this reporting period; b) problems and how resolved; c) sampling/laboratory

activities: samples collected, analyses requested, and analytical results received; d) deliverables submitted; e) personnel or schedule changes; f) activities planned next reporting period; and g) estimated or actual costs for the activities planned.

48. Completion Report. Within fourteen (14) days after completion of all engineering and construction tasks required by the SOW, Respondent shall submit for EPA review and approval a Completion Report summarizing the actions taken to comply with this Order. The Completion Report shall have accompanying appendices containing all relevant documentation generated but not previously submitted, including manifests, invoices or purchase orders, bills, contracts, receipts, and canceled checks. The Completion Report shall include the following certification which is binding on Respondent and shall be signed by Respondent's designated Project Coordinator who supervised or directed the preparation of the report:

Under penalty of law, I certify to the best of my knowledge, information, and belief, after appropriate inquiries of all relevant persons involved in the preparation of this report, that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

IX. EMERGENCY ACTION

49. In the event Respondent identifies a threat to public health or the environment at the facility at any time during implementation of this Order which it believes warrants more immediate action than the Work Plan or Order may require, or warrants action before an otherwise applicable plan is approved, Respondent shall orally notify the EPA Project Coordinator, or EPA management in his absence, within twenty four (24) hours of discovery and notify both EPA and the State in writing within ten (10) days of such discovery, summarizing the nature, immediacy and magnitude of such threat(s).

50. Proper notification, as required in this section, does not relieve Respondent of any other notification responsibility Respondent may have under any other law, including, but not limited to, Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, or Section 304 of the Emergency Planning and Community Right to Know Act, as amended, 42 U.S.C. § 11001, *et seq.*

51. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize and require Respondent to take actions to abate the threat prior to approval of a plan, or in addition to a plan after approval.

52. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Order by reference and are immediately enforceable. EPA will provide to Respondent a written description of such requirements within a reasonable period of time.

X. SITE ACCESS AND SAMPLING

53. Respondent shall provide access to EPA employees, contractors, agents, consultants, designees, representatives, and State of Utah representatives (the "Agencies") to oversee any and all work being performed under this Order. Respondent shall provide access to the facility property at any time work is being conducted pursuant to this Order and during reasonable business hours during any period work is not being conducted, for the purposes of determining Respondent's compliance with the federal and State hazardous waste programs, and this Order. Respondent shall permit the Agencies to inspect work sites and to inspect and obtain copies of computer files, operating and field logs, photographs, contracts, manifests, shipping records, and other relevant records and documents relating to this Order or any requirement under this Order and interview facility personnel and contractors performing work required by this Order. Nothing in this paragraph limits or impairs EPA's or the State's statutory authorities to enter and inspect the facility.

54. EPA may conduct any tests necessary to ensure compliance with this Order and to verify the data submitted by Respondent. EPA will provide to Respondent split samples. Respondent shall notify EPA in writing of any sampling activities undertaken pursuant to any plan or requirement of this Order a minimum of seven (7) days prior to the sampling being conducted, and shall provide split samples to the Agencies upon request.

XI. AVAILABILITY AND RETENTION OF INFORMATION

55. Respondent shall make available to EPA, and shall retain, during the pendency of this Order and for a period of three (3) years after its termination, all records and documents in its possession, custody, or control, or in the possession, custody or control of its contractors and subcontractors, which relate to the performance of this Order, including but not limited to documents reflecting the results of any sampling, tests, or other data or information generated or acquired by Respondent, or on Respondent's behalf, with respect to the implementation of this Order.

56. At the end of this three-year period and at least thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are subject to destruction, shall make such documents or information available to EPA for inspection and, upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this section at any time before expiration of the three-year period at the written request of EPA.

57. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the facility, give written notice to the transferee that the property is subject to this Order. Respondent shall provide written notice to EPA and the State of the conveyance, including the name and address of the transferee, 14 days prior to such conveyance.

58. Respondent may assert confidentiality claims pursuant to 40 C.F.R. § 2.203(b) with respect to any part of the information submitted to EPA pursuant to this Order provided such claim is allowed by law. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

XII. QUALITY ASSURANCE

59. As required in the SOW, Attachment 1, Respondent shall submit for EPA approval a draft Quality Assurance Project Plan ("QAPP"). All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that each laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance and is a Utah certified laboratory. All work undertaken pursuant to this Order shall be performed in a manner consistent with EPA Region VIII's Field Sampling Guide and the QA/R-5, *EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations*.

60. Respondent shall use quality assurance, quality control, data validation, and chain of custody procedures for all data gathered under this Order in accordance with EPA SW-846, Third Edition, or subsequent edition as then in effect.

61. Respondent shall, upon EPA request, provide for quality assurance monitoring by the laboratory(ies) performing analyses required by this Order. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

62. Respondent shall make available to EPA and UDSHW the results of all sampling and/or tests or other data generated during the implementation of this Order, and Respondent shall submit these results in required progress reports.

63. At the request of Respondent or the Agencies, Respondent or the Agencies shall allow split or duplicate samples to be taken by the requestor or their authorized representatives, of any samples collected pursuant to this Order. Respondent shall notify EPA no less than seven (7) days in advance of any sample collection activity under this Order. EPA and UDSHW shall have the right to take any additional samples that they deem necessary.

XIII. NOTICES

64. Whenever under the terms of this Order, notice is required to be given, and/or a report or other document is required to be forwarded by one Party to another, such correspondence shall

be sent by certified mail or hand carried to the following individuals at the addresses specified below. Monthly reports and notifications of emergency situations may be faxed or mailed:

As to the United States:

John Works
Technical Enforcement Program
USEPA Region VIII, 8ENF-T
999 18th Street, Suite 300
Denver, Colorado 80202-2466
Telephone: (303) 312-6196
Fax: (303) 312-6409
works.john@epa.gov

As to UDSHW:

Mr. Allan Moore
UDEQ, UDSHW
288 North 1460 West
Salt Lake City, Utah 84114-4880
Telephone: (801) 538-6170
Fax: (801) 538-6715
amoore@deq.stat.us.us

Respondent will be provided a contact for UOSH.

65. If the date for submission of any item or notification required by this Order falls upon a Saturday, Sunday, or federal holiday, the time period for submission of that item or notification is extended to the next federal working day following the weekend or holiday.

XIV. RESERVATION OF RIGHTS

66. Nothing in this Order shall limit the information gathering, access, and response authority of the United States under RCRA or any other applicable law, nor shall it limit the authority of EPA to issue additional orders to Respondent under RCRA Section 7003. Nothing herein shall limit the power and authority of EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the facility. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action and as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9601, *et seq.*, RCRA, or any other applicable law.

67. This Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under the Act, CERCLA or any other applicable law.

68. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any applicable laws and regulations and/or with any of the requirements of this Order, including but not limited to, the right to disapprove of work performed by Respondent, to request that Respondent perform additional tasks, and the right to perform any portion of the work herein.

69. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligation to comply with the Act and/or any other applicable state or federal law or regulation.

70. By issuance of this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, heirs, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order. This Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the work under the terms of this Order.

XV. FORCE MAJEURE

71. Respondent shall perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure event. For purposes of this Order, a force majeure event is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work, increased cost of performance, or strike or other work stoppage by employees or contractors of Respondent.

72. Respondent shall notify EPA orally within 24 hours after the event, and in writing within five days after Respondent becomes or should have become aware of events which constitute a force majeure event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by Respondent.

73. If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure event, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure event.

XVI. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

74. Within sixty (60) days of the effective date of this Order or prior to beginning Work, whichever is earlier, Respondent shall establish financial assurance in the amount of \$1,000,000 to assure performance of the Work in favor of EPA, using a financial assurance mechanism similar to that authorized by 40 C.F.R. Part 264, Subpart H.

75. Respondent shall establish and maintain adequate insurance. The United States shall not be liable for any injury or damages to persons or property resulting from acts or omissions of Respondent or its contractors in implementing the requirements of this Order.

76. Respondent shall indemnify and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers, successors, or assigns, or any persons including, but not limited to, firms, corporations, subsidiaries, and contractors, in carrying out activities under this Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Order.

XVII. MODIFICATIONS TO APPROVED WORK PLAN OR SCHEDULE

77. Modifications to any plan or schedule or the SOW may be made in writing by the EPA Project Coordinator or at the EPA Project Coordinator's oral direction. The EPA Project Coordinator will memorialize oral modifications in writing within a reasonable period of time; provided, however, that the effective date of the modification shall be the date of the EPA Project Coordinator's oral direction.

78. If Respondent seeks permission to deviate from any approved Work Plan or schedule or the SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed Work Plan modification and its basis. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of any obligation to obtain such formal approval as may be required by the Order and to comply with all requirements of the Order unless it is formally modified.

XVIII. ISSUANCE, EFFECTIVE, AND TERMINATION DATES

79. This Order shall be issued on the day it is filed with the Regional Hearing Clerk and shall be effective five (5) calendar days from the day it is issued.

80. Any modification made by EPA to this Order is effective on the date such modification is filed with the Regional Hearing Clerk, so long as Respondent is sent a copy by certified mail or has hand delivered to it a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

81. This Order shall terminate upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the requirements of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, but not including record retention, have been satisfactorily completed.

XIX. OPPORTUNITY TO CONFER

82. Respondent may at any time within five (5) days after this Order is issued request a telephonic conference with EPA to discuss tasks under the SOW which must be completed within twenty four (24) hours of the effective date of this Order. Respondent may within seven (7) days after the effective date of this Order request a conference with EPA at which Respondent may appear in person or by an attorney or other representative, and which may be held in person or by telephone, to discuss all other tasks under the SOW, Attachment 1.

83. The purpose and scope of any conference shall be limited to issues involving the implementation of the actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made.

84. Requests for a conference must be by telephone to Andrew Lensink at (303) 312-6908 followed by written confirmation mailed that day to:

John D. Works
Environmental Protection Specialist
EPA Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2466
(303) 312-6356

XX. ATTACHMENTS AND DELIVERABLES

85. All attachments to the Order listed below are incorporated by reference. Attachments to this Order are:

Attachment 1 - SOW

Attachment 2 - Fact Sheet

In the Matter of: Magnesium Corporation of America
Proceeding Under Section 7003 of the Solid Waste Disposal Act, as
Amended, 42 U.S.C. § 6901 et seq., 42 U.S.C. § 6973

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION VIII
Complainant**

Date: 6-15-01

By: Sharon L. Kercher
Sharon L. Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 6/15/01

By: Michael T. Risner
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

JUN 15 2001

Issuance Date

Attachment 1 to Unilateral RCRA Section 7003 Order

STATEMENT OF WORK
ADMINISTRATIVE ORDER, DOCKET NO. RCRA-8-2001-05
MAGNESIUM CORPORATION OF AMERICA,
"MAGCORP"
ROWLEY, UTAH, FACILITY

I. PURPOSE

The purpose of this Statement of Work ("SOW") is to define tasks, standards, measures and the schedule which Respondent shall implement, as required by the Order issued by the United States Environmental Protection Agency-Region VIII ("EPA"), pursuant to RCRA Section 7003, 42 U.S.C. § 6973, Docket No. RCRA-8-2001-__, in addition to those required in Administrative Order on Consent, Docket No. RCRA-8-2000-16 ("Consent Order").

II. SITE SPECIFIC INFORMATION

II.1 Site Location and Background

The facility owned by MagCorp ("Respondent") is located at Rowley, Utah, fifteen miles north of Exit 77 from Interstate 80 west. The facility produces magnesium using an anhydrous electrolytic production process. In addition to magnesium metal and alloys, the facility produces chlorine, ferric and ferrous chlorides, and calcium chloride, and is producing or has produced other materials as well. The main raw material is concentrated brine from the Great Salt Lake. Respondent takes in salt water about 42 miles northeast of the facility, concentrates it in several evaporation ponds, and pipes it to the Rowley plant.

Respondent concentrates the brine further at the plant, removes sulfates and boron, and then removes the water through spray drying, leaving an anhydrous magnesium chloride powder. It melts and chlorinates this powder in melt reactor cells, and then transfers the molten anhydrous magnesium chloride to electrolytic cells to separate the molten salt into magnesium metal and chlorine gas. "Anode dust" laced with hexachlorobenzene ("HCB") and other contaminants is produced during this electrolytic separation stage. The off-gas from the electrolytic cells carries HCB-laden anode dust which settles out as the gas passes through the anode header. The dust is cleared from the anode header by a drag chain which operates continuously.

II.2 Current Situation

EPA sampled several areas at the facility, including the anode header boxes (also called "grizzly" boxes) located in the courtyard area. This area is between two buildings where the anode headers converge and the anode boxes are located. This courtyard area is approximately 75 to 100 feet wide and approximately 200 feet in length. In the courtyard area are four separate anode boxes that collect the anode dust, sumps beneath each box, and the central (also called "main") sump. The anode boxes for buildings number 3 and 4 are located on the western side of

the courtyard. There is one operational anode box and collection header on the eastern side of the courtyard. This eastern anode box is for the collection of anode dust from the new "M" type electrolytic cells in building number 1. EPA sampled the anode dust from anode boxes for buildings number 3 and 4, and the sludge in the central sump on January 12, 2001. The analyses from that sampling event show that the dust waste stream from anode box number 4 contains high levels of HCB, dioxins, furans, polychlorinated biphenyls ("PCBs"), chromium, and arsenic. The analysis of the anode dust from anode box number 4 exceeded TCLP levels for chrome and arsenic. This waste was being disposed and released in an uncontrolled manner to the environment. Additionally, at a minimum, the high concentration of HCB present in the anode dust presents a significant health risk to workers emptying the anode boxes or working in the courtyard area.

The Utah Labor Commission, Division of Occupational Safety and Health ("UOSH"), with the assistance of EPA, conducted an inspection of the anode header area on May 25, 2001. At that time, the anode headers for buildings 1 and 4 were operational. The anode header for building 3 was not operational. Final analytical results for the EPA portion of the inspection are not yet available.

III. SCOPE OF WORK

Respondent shall perform the following tasks in accordance with the schedule outlined below in order to immediately address the threat to workers who clean, service, maintain, or otherwise come in contact with the anode header/anode box dust collection system.

Immediate Measures: Within 24 Hours of Effective Date of Order

Task 1: Respondent shall stop releasing anode dust to the environment. At a minimum, Respondent shall capture, containerize, manage, and properly dispose all anode dust generated from the anode dust collection systems for all electrolytic cells, so as to prevent human exposure to anode dust. This includes all fugitive dust emissions that escape from the system during normal operation, cleaning, servicing, or the transfer of the dust to drums or containers. Respondent shall eliminate all releases, including fugitive emissions, from the anode header and/or anode box system.

Task 2: Respondent shall create and maintain a log pertaining to the anode dust generated from the electrolytic cells. This log will record the names of employees who clean, containerize, test, and/or manage anode dust. The log will also state the amounts of anode dust collected, and the date and time when the dust was collected. The log will contain a certification that all information in the log is true and accurate under penalty and perjury of law.

Task 3: Respondent shall include in the log names of employees that work within close proximity (50 feet) of the anode boxes when anode dust is removed from the anode headers or anode boxes. This will include the names of all employees that service, maintain, or operate

portions of the anode header/anode box system. The log will include the names of employees performing other tasks in the courtyard area, such as maintenance on the sumps underlying or connected to the anode headers. Respondent shall verify and document on the above referenced log, that all such employees are wearing appropriate personal protective equipment ("PPE") and clothing, during times when the boxes are being cleaned or the system is being serviced in any way. This includes PPE that will eliminate the possibility of exposure from dust or airborne particles released from the boxes, or from soils disturbed, or releases created during the transfer of anode dust from one container to another. Respondent shall immediately require that all employees described in this Task and Task 2 undergo appropriate decontamination procedures prior to leaving the courtyard area. Employees that work on this system shall not be allowed to leave the facility or travel to off site destinations in clothing worn while working on this system or worn when they were within close proximity of the system while the system was being serviced. Respondent shall include in the log the decontamination procedures for the employees in this Task and Task 2.

Task 4: Respondent shall cordon off the courtyard area and restrict employee traffic into and through this area to only employees that have read and signed the facility Health and Safety Plan ("HASP"), completed the appropriate training, are wearing the appropriate PPE, comply with all applicable UOSH/Occupational Safety and Health Act (OSHA) requirements/regulations. Employees entering into this courtyard area shall be provided with all relevant information about the contamination, contaminants, and exposure risk as defined by the Standards for Hazard Communication.

Task 5: Respondent shall post on all facility bulletin boards and disseminate to all MagCorp employees, the fact sheet prepared by EPA on the "Risk to Workers from Anode Dust," attached to this Order.

Interim Measures: Within 7 Days of effective Date of Order

Task 6: Respondent shall design, construct and/or build engineering controls to stop the release or potential release of anode dust and all fugitive dust emissions from the anode header system, including the anode boxes. Respondent shall seal all sumps, pipes, conduits, or other pathways between the anode box sumps and the central sump or any other avenues which the anode dust may escape from the anode headers and or the anode boxes into the environment. Respondent shall prepare a plan for routine inspections, and monitoring of this anode dust collection system. This plan will ensure that all emissions of anode dust from the anode header system have been stopped. Respondent will log all inspections of the system and make that log available to EPA upon request. This task states that no anode dust will be released to the environment from any point in the anode dust collection system and all anode dust must be properly disposed.

Task 7: Respondent shall write and implement a HASP to address worker exposure in areas where anode dust is managed or has been disposed and submit it to EPA and UOSH for

approval. This plan shall cover employees entering the ditch system area, roads along the ditch system, and employees working in/or around the 400 acre surface impoundment. Respondent shall implement this HASP upon its completion and approval. Respondent shall implement changes to this HASP within 24 hours of direction from either UOSH or EPA.

Interim Measures: Within 14 days of the effective Date or Order

Task 8: Respondent shall submit a medical monitoring plan to EPA and UOSH for approval. The plan shall include a medical monitoring program, available to any MagCorp worker upon request, for sampling and analysis of blood, urine, and tissues, as required, to assess the exposure to workers from HCB in the anode dust. The monitoring program shall also include provisions for testing peripheral nervous system function, liver function, lung function, and any other medical symptoms related to HCB exposure deemed necessary by the attending physician. The monitoring program shall also provide for the collection of all available medical records on employees entering into or working in the courtyard area including, but not limited to, pre-hire (employment conditional) physical examinations and all other occupational related baseline or periodic medical examinations. Such medical records shall be coded as to maintain the anonymity of individual employees. At a minimum, the medical monitoring program shall provide for qualified medical personnel to conduct the testing, utilize an independent laboratory to perform the analysis, and ensure confidential communication of results to the individual MagCorp worker. Respondent shall post notices on bulletin boards explaining this program and that this program is available to MagCorp employees. Respondent shall submit all records created under this task, properly coded to maintain patient anonymity, to Utah Division of Solid and Hazardous Waste ("UDSHW"), UOSH, and EPA.

Task 9: Respondent shall analyze the anode dust for HCB, dioxins, furans, PCBs, hexavalent chromium, trivalent arsenic, TCLP metals, and volatile and semi volatile compounds. Respondent shall analyze the dust for all dioxin-like congeners of dioxins, furans, and PCBs. Respondent shall submit a sampling plan to EPA outlining the frequency of sampling as Respondent's process changes, location of each sample, analytical method used for each sample, and list appropriate documentation to be used for each sampling event. Respondent shall implement the sampling plan with 10 days of receiving EPA comments.

Within 30 Days of Effective Date of Order

Task 10: Respondent shall submit a Work Plan to EPA to characterize the soils in the courtyard area. Respondent shall sample for HCB, dioxins, furans, PCBs, chromium, and arsenic. Respondent shall analyze these samples for all dioxin-like congeners. This work plan will detail the procedures for sampling, including identifying the locations and depth that the samples will be taken, and the analytical methods and parameters for which each sample will be analyzed. The plan shall have a detailed schedule for the sampling and analytical efforts to be conducted in the courtyard area. The plan shall be submitted to EPA for review and approval with comments. Within 10 days after Respondent has received the approved plan from EPA ,

Respondent will implement the plan. All QA/QC analysis, with summary tables of analytical results, including specific congeners for dioxin, furans, and PCBs will be provided to UDSHW, UOSH, and EPA.

Task 11: Within thirty days of receipt of the analytical results, but no later than 120 days after the effective date of this Order, Respondent shall submit to EPA a work plan to address all contamination in the courtyard area. This Work Plan shall contain a detailed schedule for all courtyard remedial activities that shall be performed. Respondent shall submit the work plan to EPA for comment and approval. Within 10 days of receipt of EPA approval, Respondent shall implement the work plan.

Task 12: Respondent shall extend fencing and signing required under the Consent Order to the entire Main ditch and all connecting ditches to the mouth of the 400 acre hazardous waste surface impoundment. The fencing shall include all ditches at MagCorp that have a hydrological connection to the west ditch, main ditch or the 400 acre surface impoundment. This fencing shall be constructed in the same manner as the fencing being completed under the Consent Order. Signs identical to those required in the Consent Order shall be posted at 750' intervals along the Main ditch and ditch system.

Additional Tasks

Task 13: Respondent shall remove the waste in the central sump and manage that waste in accordance with all applicable regulations at least every 90 days. Respondent shall institute a documentation system that identifies the quantity of waste collected in the central sump, test parameters, and cleaning schedule for the sump. Additionally, Respondent shall have the sump certified by a Professional Engineer on an annual basis to indicate that the sump is not discharging hazardous waste into the soil or ground water.

Task 14: Respondent shall continue the investigation of potential sources of dioxins, furans, and HCB (described at Task 7 of the Consent Order SOW), but shall extend that to include PCBs, hexavalent chromium, and trivalent arsenic. At a minimum, Respondent shall investigate equipment including melt cells, chlorine reduction burner, high energy scrubber and all air emission stacks. Upon completion of the investigation, pursuant to the schedule approved by EPA under the Consent Order SOW, Respondent shall submit a report to EPA with its findings, and shall include in the report recommendations as to how it will eliminate future formation and/or releases of dioxins, furans, HCB, PCBs, chromium, and arsenic. Within 30 days of EPA's approval, Respondent shall implement the report.

IV. DOCUMENTS REQUIRED

The following key planning requirements/documents shall be developed for and apply to the Work Plan or Plans:

a. Project Management and Personnel Qualifications

Respondent has responsibility for selecting contractors to do the Work. The Work Plan shall provide a list of Respondent's employees and/or the contractors' employees who will be assigned key roles in conducting the Work. Changes in staffing of these key roles during the Work shall be preceded by notice in writing delivered to EPA one week in advance of the anticipated change.

Employees shall have appropriate training, experience, and capabilities to perform the Work. Key employees' qualifications shall be listed in the Work Plan. EPA has the right to disapprove of a contractor pursuant to paragraph 45 of the Order. If EPA disapproves of a contractor, it will state the reasons for the disapproval, and Respondent will notify EPA of a replacement within ten (10) days of EPA's written notice.

b. Quality Assurance and Quality Control ("QA/QC") and Data Validation.

EPA requires that certain documents be developed and approved by EPA before field activities can be initiated. These plans include the Quality Assurance Project Plan ("QAPP") and the Health and Safety Plans ("HASP"). This HASP is in addition to those described at Tasks 4 and 7, above.

In developing the QAPP and HASP, Respondent shall consider and utilize the following EPA guidance documents: Field Sampling Guide, Standard Operating Safety Guide, and the QAR5. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration regulations found at 29 C.F.R Part 1910 and as adopted by Utah.

c. Data Validation

All data generated during the Work shall be validated. The data validation procedures and levels which must be integrated with the EPA Quality Assurance ("QA") program's requirements are described in detail in the Emergency Response Branch, Region VIII QAPP or its appropriate references.

d. Document Control

Documents and information generated during the Work shall be consistently well managed. A complete and accurate Site file for this project shall be maintained by the Respondent. The Site file includes records, documents, and information generated in performance of the Work.

e. Report

Respondent shall submit weekly status reports to EPA mailed and faxed on the last day of each week through completion of the Work. The reports shall follow a standard format that consists of the topics on the following list:

- * Progress made this reporting period;
- * Problems identified and/or resolved;
- * Sampling/laboratory activities: samples collected, analyses requested, and analytical results received;
- * Deliverables submitted;
- * Personnel or schedule changes; and,
- * Activities planned next reporting period.

Upon completion of the Work, a final report summarizing the Work conducted pursuant to the Order shall be prepared as required by paragraph 48 of the Consent Order and delivered to EPA.

EXHIBIT C

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UNITED STATES DISTRICT COURT DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

MAGNESIUM CORPORATION OF
AMERICA, RENCO METALS, INC.,
et al., The RENCO GROUP, INC.,
The RENNERT TRUSTS, JUSTIN W.
D'ATRI AND UNIDENTIFIED
TRUSTEES, and IRA L. RENNERT,

Defendants.

COMPLAINT

2:01 CV 0040 B

Civil Action No.:

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF THE CASE

1. Plaintiff brings this civil action against Magnesium Corporation of America ("MagCorp"), Renco Metals, Inc., ("Metals"), the Renco Group, Inc. ("Group"), the Rennert

FILED IN UNITED STATES DISTRICT
COURT DISTRICT OF UTAH
JAN 16 2001
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

Trusts ("Trusts"), Justin W. D'Atri ("D'Atri") and unidentified trustees of the Rennet Trusts, and Mr. Ira Leon Rennert ("Rennert"), to obtain injunctive relief and civil penalties for MagCorp's numerous violations of the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 *et seq.*, at MagCorp's magnesium production facility in Rowley, Utah, located approximately 23 miles northwest of Grantsville, Utah (hereinafter, the "facility").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 3006(g) and (h) and 3008(a) of RCRA, 42 U.S.C. §§ 6926(g), (h), 6928(a).

3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c), and 1395(a), and Sections 3006(g) and (h) and 3008(a) of RCRA, 42 U.S.C. §§ 6926(g), (h), 6928(a), because MagCorp was at all material times, and is, doing business in this district. The events giving rise to the claims alleged herein occurred in this district.

4. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519.

NOTICE

5. Notice of the commencement of this action has been given to the State of Utah, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

DEFENDANTS

6. MagCorp, whose business address is 238 North 2200 West, Salt Lake City, Utah 84116, is a corporation organized under the laws of the State of Delaware.

7. MagCorp is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. §

6903(15), 40 C.F.R. § 260.10, and Utah Admin. R. R315-1-1(b).

8. At all material times herein, MagCorp was and is the “owner” and “operator” of a “facility,” as those terms are defined in 40 C.F.R. § 260.10, and Utah Admin. R. R315-1-1(b), whose waste management activities, including “treatment,” “storage,” and/or “disposal” of hazardous wastes at the facility, were and are subject to regulation under RCRA.

9. At all times material herein, MagCorp was and is a “generator,” within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b), which produced and produces waste regulated as hazardous under RCRA.

10. Mr. Ira Leon Rennert, whose address is 625 Park Avenue, New York, NY 10021, is Chairman of the Board of Group, Metals and MagCorp. Rennert is the sole director of Metals and also is the Chief Executive Officer of Group and Metals.

11. Rennert established Trusts for the benefit of himself and members of his family (hereinafter the “Trusts”). After a reasonable opportunity for further investigation or discovery, the evidence is likely to show that some of the Trusts are located in New York. Justin D’Atri is or was a Trustee of the Trusts; other unidentified persons are Trustees of the Trusts.

12. The Trusts own 100% of Group. Group, whose business address is 30 Rockefeller Plaza, Suite 4225, New York, NY 10012, is incorporated under the laws of the State of New York as a Subchapter S corporation whose profits and losses are attributed to its owners for income tax purposes. Group is also a holding company that owns, *inter alia*, 100% of Metals’ stock. Group also owns numerous other concerns in the United States and abroad.

13. Metals, whose business address is 238 North 2200 West, c/o MagCorp, Salt Lake City, Utah 84116, is incorporated under the laws of the State of Delaware. Metals is a holding

company with no independent operations of its own. MagCorp became a wholly-owned subsidiary of Metals in 1993, as did a second company, Sabel Industries, Inc. ("Sabel"). From the time of Metals' incorporation in 1993 to early December, 2000 Metals' income was generated by MagCorp and Sabel. Sabel was sold to K. Sabel Holdings, Inc. in December, 2000, for \$8 million cash. Prior to this sale, Sabel accounted for approximately 25% of Metals' income.

GENERAL ALLEGATIONS

Statutory and Regulatory Framework

14. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976 to amend the Solid Waste Disposal Act, and on the Hazardous and Solid Waste Amendments Act ("HSWA"), enacted by Congress in 1984 to further amend the Solid Waste Disposal Act.

15. RCRA's Subchapter III (RCRA §§ 3001 - 3023, 42 U.S.C. §§ 6921 - 6940) (also known as "Subtitle C") required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store and dispose hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 - 272, comprise EPA's RCRA hazardous waste program. RCRA Subtitle C also required that EPA promulgate regulations governing recycled oil and setting forth standards for the management, including storage, of used oil, both of which are hazardous wastes. RCRA § 3014, 42 U.S.C. § 6935. EPA's used oil regulations are codified at 40 C.F.R. Part 279.

16. RCRA Section 3006, 42 U.S.C. § 6926, allows the Administrator to authorize a state to

administer its own hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program. Where a state obtains such authorization, state requirements will apply in lieu of the federal requirements.

17. EPA authorized the State of Utah to administer its hazardous waste program in lieu of the federal program on October 10, 1984, effective October 24, 1984, and has authorized numerous revisions to the Utah program since then. Pursuant to such authorizations, the State of Utah, through its Department of Environmental Quality ("UDEQ"), has administered the core RCRA hazardous waste program in the State through enactment of its Solid and Hazardous Waste Act, Utah Code Ann. §§ 19-6-101, *et seq.*, and rules and regulations promulgated thereunder, set forth at Utah Admin. R. Title R315. EPA authorized Utah to administer its used oil program on January 13, 1999, effective March 15, 1999. Utah's used oil regulations are set forth at Utah Admin. R. R315-15.

18. While Utah has independent enforcement authority, EPA retains the right to conduct inspections under Section 3007 of RCRA, 42 U.S.C. § 6927, and to take enforcement actions under Section 3008, 3013 and 7003 of RCRA, 42 U.S.C. § 6928, 6934 and 6973, regardless of whether Utah has acted. See 49 Fed. Reg. 41036 (October 19, 1984); 51 Fed. Reg. 37729 (October 24, 1986); 54 Fed. Reg. 20847 (May 15, 1989); 56 Fed. Reg. 21601 (May 10, 1991) and 59 Fed. Reg. 16568 (April 7, 1994).

19. Pursuant to Sections 3006(g), 3008(a), (g) and (h) of RCRA, 42 U.S.C. §§ 6926(g), 6928(a), (g) and (h), the United States may also enforce the federally-authorized Utah hazardous waste program (as well as federal regulations promulgated pursuant to HSWA until EPA authorizes the State to enforce the Utah program), by filing a civil action in United States District

Court for injunctive relief and civil penalties.

20. In July, 2000, Utah codified a new numbering system for sections within Utah Admin. R. Subtitles R315-5, R315-6 and R315-3. As EPA has not yet authorized these new regulations, this Complaint seeks enforcement only of the earlier regulations. However, as the new regulations are more readily accessible, for convenience, this Complaint cites to both the earlier (authorized) regulations and the new (renumbered) regulations, where applicable.

21. Under RCRA and the Utah program, a waste is "hazardous," first, if it is a "solid waste," which term includes, *inter alia*, a liquid, semisolid, or contained gaseous material; and second, if it is either listed as a hazardous waste, or exhibits the characteristic of ignitability, corrosivity, reactivity, or toxicity. RCRA §§ 1004(5), 1004(27) and 3001; 42 U.S.C. §§ 6903(5), (27) and 6921, and 40 C.F.R. Part 261; Utah Code Ann. 19-6-102(9), and 19-6-102(17)(a), Utah Admin. R. R315-2. Generally, a waste exhibits the characteristic of corrosivity if it either has a pH less than or equal to 2; or is a liquid and corrodes steel at a rate greater than 6.35 mm per year at a test temperature of 55 degrees Celsius. 40 C.F.R. § 261.22; Utah Admin. R. R315-2- 9(e). A waste exhibits the characteristic of toxicity if it leaches contaminants at concentrations greater than specified values. 40 C.F.R. § 261.24; Utah Admin. R. R315-2-9(g).

22. The federal and Utah hazardous waste programs primarily regulate hazardous waste management facilities through a permitting process. The programs require each person owning or operating a hazardous waste treatment, storage, or disposal facility ("TSD facility") to have a permit or plan approved, and prohibit the treatment, storage or disposal of hazardous waste except in accordance with the permit. Section 3005 of RCRA, 42 U.S.C. § 6925 and 40 C.F.R. Parts 264, 268 and 270 and Utah Code Ann. § 19-6-108, Utah Admin. R315-8, R315-13 and

R315-3. The federal and State programs also provide that a hazardous waste facility in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirements to have a permit, may qualify for "interim status" to continue operating until final action is taken by EPA or the State with respect to the facility's permit application, so long as the facility satisfies specified conditions. Section 3005(e) of RCRA, 42 U.S.C. § 6925(e) and 40 C.F.R. Part 265; Utah Code Ann. § 19-6-108(3)(f), Utah Admin. R. R315-7.

23. In addition to banning "disposal" of hazardous waste except in accordance with a permit, EPA and Utah also ban what is known as "land disposal" of specified hazardous wastes, unless such hazardous wastes are first treated in compliance with specified treatment levels or methods known as "land disposal restrictions," or "LDRs." RCRA Section 3004(d), 40 C.F.R. Part 268, and Utah Admin. R. R315-13-1. The federal and authorized Utah LDRs are set forth in 40 C.F.R. Part 268, and Utah Admin. R. R315-13, respectively.

24. Under the federal and Utah programs, "land disposal," when used with respect to a specified hazardous waste, includes any placement of such waste in a landfill or surface impoundment. RCRA § 3004(k), 42 U.S.C. § 6924(k); Utah Admin. R. R315-13-1. A "surface impoundment" is "a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well." 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b). A "landfill" is "a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not . . . a surface impoundment . . . or a corrective action management unit." 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).

25. The federal and Utah programs also regulate generation of hazardous waste, whether or not a facility also treats, stores or disposes hazardous waste or is otherwise required to obtain a permit or interim status. The programs require, *inter alia*, that each person properly store, label, manifest, and inspect hazardous waste it generates. Section 3002 of RCRA, 42 U.S.C. § 6925, 40 C.F.R. Part 262; and Utah Admin. R. R315-5.

26. The federal and Utah programs also generally require that TSDs seeking permits perform corrective action for all releases of hazardous wastes or constituents (as that term is used in 40 C.F.R. § 261.11(a)(3), Utah Admin. R. R315-2-9(c)(1)(iii)) from any solid waste management unit at the facility and beyond the facility boundary, regardless of the time at which waste was placed in such unit. RCRA §§ 3004(u) and (v), 42 U.S.C. § 6924(u), (v), 40 C.F.R. §§ 264.552 - 554; Utah Code Ann. § 19-6-105(d), Utah Admin. R. R315-8-21, R 315-7-8.1(b). EPA authorized Utah to implement certain corrective action requirements on March 15, 1999. In addition, whenever EPA or Utah determine there has been a release of hazardous waste into the environment from a facility that has interim status, that once had interim status, or that should have had interim status, they may commence a civil action for appropriate relief, including an injunction requiring a defendant to take corrective action necessary to protect human health and the environment. RCRA § 3008(h), 42 U.S.C. § 6928(h); Utah Code Ann. § 19-6-112.

General Factual Allegations

27. MagCorp is the largest producer of magnesium in the United States, and the third largest magnesium producer in the world. MagCorp is able to produce roughly 40,000 tons per year of magnesium and magnesium alloys. MagCorp also produces liquid chlorine, hydrochloric acid, ferrous and ferric chloride, calcium chloride, and potassium-containing salts.

28. The facility was constructed in 1972, under the ownership of National Lead, Inc. ("NL"). In 1980, AMAX, Inc. purchased the facility from NL, and operated it through its subsidiary, AMAX Magnesium Corp. In 1989, RENMAG, Inc. purchased the stock of AMAX Magnesium Corp. and changed its name to Magnesium Corporation of America, or MagCorp. The facility occupies 4,525 acres of land in the Tooele County desert west of the Great Salt Lake.

29. MagCorp's manufacturing operations generally include removing minerals from, *inter alia*, Great Salt Lake surface waters and groundwater brines by concentrating the waters in solar evaporating ponds and in concentrator tanks which utilize waste heat from other facility processes; treating the concentrated brine to remove potassium, boron and sulfates; spray drying the brine to produce an impure anhydrous magnesium-rich powder; melting and chlorinating the powder to convert magnesium oxide therein into magnesium chloride; separating the molten magnesium metal from chlorine gas by electrolysis; casting the magnesium into desired products; and capturing, and recycling or selling, chlorine gas and hydrochloric acid generated in the electrolytic refining process.

30. MagCorp's manufacturing facilities include solar evaporation ponds; a boron plant; a calcium chloride plant; spray dryers; melt cells; electrolytic cells; a chlorine plant; hydrochloric acid manufacturing plant; a cast house; and a ferrous and ferric chloride processing plant.

31. MagCorp commingles and disposes thousands of gallons per day of liquids and solids through a series of pipes and underground ditches that collect drainage from the facility. Two of the ditches, which MagCorp employees call the "Chlorine Plant Ditch" and the "Central Ditch," flow into a third ditch, which MagCorp employees call the "Red River" because of its color and contents. A number of pipes also discharge waste from the facility directly into the Red River.

MagCorp disposes waste containing its Pentapure Solids, and its High Energy Scrubber waste, into one or a series of collection tanks, which in turn feed into pipes which discharge into the Red River. EPA sampling of the Pentapure Solids shows that these are hazardous (or toxic) because of their chromium content. EPA sampling of the High Energy Scrubber waste shows that this is hazardous (or corrosive) because it has a pH of less than 2. The Red River, which is approximately 2000 feet long, 10 - 20 feet deep, and 20 - 40 feet wide, in turn, discharges into a 400-Acre Pond. EPA sampling of the Red River shows that its contents have a pH of 2, rendering these hazardous for corrosivity.

32. Each of the Ditches and the 400-Acre Pond, collectively or singularly, constitute a "surface impoundment" within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b). Neither the Ditches, nor the Pond, are lined to prevent infiltration of liquids into the ground. MagCorp has admitted that there is a hydrogeologic connection between the 400-Acre Pond and the Great Salt Lake. EPA sampling of the 400-Acre Pond shows that the contents have a pH of less than 2, rendering them hazardous for corrosivity.

33. The Chlorine Plant Ditch, which MagCorp employees also call the "White Ditch" because of the whitish-greenish cake-like solids and liquids therein, primarily collects waste flows from MagCorp's Chlorine Plant, and discharges these to the Red River. The Chlorine Plant Ditch is approximately one-half mile long, 10 - 15 feet deep, and 10 - 20 feet wide. At least 2 pipes, which MagCorp employees call "Outfall 1" and "Outfall 2," discharge Chlorine Plant wastes into the Ditch. During its inspections, EPA identified wastes generated at the Chlorine Plant as coming from MagCorp's Chlorine Plant Water Wash Column. EPA sampling of the Chlorine Plant Water Wash Column shows that this waste has a pH of less than 2,

rendering it hazardous for corrosivity.

34. The Central Ditch, which also discharges to the Red River, is also approximately one-half mile long, 10 - 15 feet deep, and 10 - 20 feet wide. At least 3 pipes discharge wastes from the electrolytic, melt reactor, and hydrochloric acid production areas into the Central Ditch. MagCorp discharges its Chlorine Reduction Burner waste through one or more of these pipes into the Central Ditch. EPA sampling of MagCorp's Chlorine Reduction Burner Waste shows that this waste has a pH of less than 2, rendering it hazardous for corrosivity.

35. EPA sampling also shows the presence of numerous hazardous constituents, including hexachlorobenzene ("HCB") in the waste containing MagCorp's Pentapure Solids at 360 parts per million ("ppm"). HCB leaching in amounts exceeding 0.13 ppm render a waste hazardous. EPA sampling also shows the presence of HCB in MagCorp's Chlorine Plant Water Wash Column and in its Chlorine Reduction Burner Waste, as well as in packing tower residues, Central Ditch contents and sediments, smut piles, and solids in the 400-Acre Pond.

36. EPA sampling of spent solids in a pit in which MagCorp manufactures Ferrous and Ferric Chloride, which solids MagCorp disposes in its on-site industrial landfill, show that MagCorp's Ferrous and Ferric Chloride Solids are hazardous because of their chromium or arsenic content. The landfill constitutes a "Landfill" within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).

37. MagCorp disposed waste in a 1200-acre pond immediately adjacent to the shores of the Great Salt Lake until 1986, when the Lake's waters rose and the walls of the 1200-acre pond were breached, causing the pond's contents to empty into the Great Salt Lake. The 1200-acre pond constitutes a solid waste management unit, that was never properly closed, as is required by

40 C.F.R. §§ 264.110 and 265.110 and Utah Admin. R. R315-8-7 and R315-7-14, and that is subject to corrective action requirements under RCRA § 3004(u), (v), and Utah Code Ann. §19-6-105(d), and Utah Admin. R. R315-8-21, and R 315-7-8.1(b).

38. MagCorp disposes solid wastes, including casthouse residue, sludge residual from its electrolytic cells (which MagCorp calls "smut"), and cell salts, in unlined, uncovered residual piles. Sampling to date shows that these piles contain hazardous constituents, including dioxin, HCB, lead, arsenic, chromium, barium and magnesium hydroxide.

39. The facility has numerous sumps, or pits. MagCorp stores Pentapure Solids in a series of sumps in the electrolytic cell area. MagCorp had disposed waste from its laboratory (containing arsenic, barium, and other metals) in a sump outside its laboratory building. The sump conveyed the lab waste to the Central Ditch, and ultimately, to the Red River/400-Acre Pond. As of March 25, 1997, upon MagCorp's payment of a \$2,500 penalty, and entry into a settlement with Utah resolving Utah's 1992 enforcement action, MagCorp ceased disposing metal-bearing laboratory wastes in its Ditches and Ponds. The violations which were the subject of the Utah enforcement action were and are different in time and substance from those alleged in this complaint.

40. The smut piles, sumps, and units into which MagCorp formerly disposed hazardous waste, or presently disposes hazardous constituents, constitute solid waste management units, and are subject to the corrective action requirements set forth in RCRA § 3004(u), (v) and Utah Code Ann. §19-6-105(d), and Utah Admin. R. R315-8-2, and R 315-7-8.1(b).

41. MagCorp has never sought a permit to treat, store or dispose under RCRA and the authorized Utah hazardous waste program.

42. MagCorp has never sought interim status to treat, store or dispose under RCRA and the authorized Utah hazardous waste program.

Regulatory Status of MagCorp's Wastes

43. The Bevill Amendment temporarily excluded from RCRA Subtitle C regulation solid wastes generated by the extraction, beneficiation, and processing of ores and minerals, pending EPA's provision of a report to Congress and decision whether regulation of such wastes was warranted. RCRA §§ 3001(b)(3)(A)(ii), 8002(f); 42 U.S.C. §§ 6921(b)(3)(A)(ii), 6982(f), and Utah Code Ann. § 19-6-102(17)(b)(iv).

44. In September, 1989, EPA promulgated a rule that removed all mineral processing wastes from the Bevill exclusion, with the exception of certain wastes which would be permanently retained within the exclusion, and certain other such wastes which would be conditionally retained pending further analysis by EPA in accordance with RCRA § 8002(p), 42 U.S.C. § 6982(p).

45. Mineral processing wastes which lost their Bevill excluded status automatically became subject to Utah hazardous waste regulation on December 13, 1994, upon the effective date of EPA's authorizing Utah to implement subtitle C requirements as to such wastes (59 Fed. Reg. 52084 (October 14, 1994); and became subject to the further treatment requirements set forth in EPA's "Phase IV LDR" regulation on August 24, 1998 (63 Fed. Reg. 28566 (May 26, 1998)), the effective date of the EPA rule. At present, enforcement of such treatment requirements is solely EPA's responsibility through the federal regulation, since Utah is not yet authorized to implement such treatment requirements.

46. One of the wastes EPA had conditionally retained for further analysis, as set forth in

its 1989 rule, was “process wastewater from primary magnesium processing by the anhydrous process.” 54 Fed. Reg. 36592 (September 25, 1989). That waste occurred and still occurs only at the Rowley, Utah facility.

47. In July 31, 1990, EPA reported to Congress that two “mineral processing” wastes -- first, a “scrubber underflow,” generated through processing of hydrochloric acid formed when the impure magnesium powder is melted and chlorinated to convert magnesium oxide in the powder into the chloride salt; and second, a “scrubber liquor,” generated from processing gas created when electrolysis is used to separate the molten magnesium chloride into magnesium and chlorine gas -- should remain excluded from hazardous waste regulation under the Bevill Amendment.

48. EPA solicited public comment on the Report to Congress and its underlying data on August 7, 1990 (55 Fed. Reg. 32135), and extended the time for submission of public comment on September 12, 1990 (55 Fed. Reg. 37540).

49. By rule dated June 13, 1991, EPA codified its exclusion of “process wastewater from primary magnesium processing by the anhydrous process” under the Bevill Amendment: 56 Fed. Reg. 27300 (June 13, 1991). 40 C.F.R. § 261.4(b)(7)(ii)(O); Utah Admin. R. R315-2-4(b)(7)(ii)(O).

50. None of the wastes that are the subject of this complaint constitute “process wastewater from primary magnesium processing by the anhydrous process.” Rather, they constitute wastes generated in MagCorp’s manufacture of chlorine gas, hydrochloric acid, and ferrous and ferric chloride.

51. In the alternative, some of the wastes are mineral processing wastes, but were not

identified by EPA in its July, 1990 Report to Congress, and do not constitute melt cell hydrochloric acid scrubber underflow or electrolytic cell chlorine gas scrubber liquor.

52. None of the wastes that are the subject of this complaint are "Bevill-excluded" wastes. Rather, they are subject to federal and Utah hazardous waste regulation.

53. At the request of UDEQ, EPA inspected the MagCorp facility in 1997 and 1998. EPA concluded that MagCorp was incorrectly characterizing its waste streams as excluded from RCRA and Utah hazardous waste regulation by the Bevill Amendment.

54. On March 5, 1999, UDEQ requested that EPA assume lead agency status in enforcing hazardous waste requirements at the MagCorp facility.

Piercing the Corporate Veil

55. Rennert, individually or through the Trusts created by him, controls Group, Metals, and MagCorp.

56. MagCorp is a wholly owned subsidiary of Metals. Metals is a wholly owned subsidiary of Group, and Group is 100% owned by the Trusts.

57. MagCorp is a closely held corporation that is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. MagCorp's sales in 1999 were nearly \$150 million, but as of April, 2000, MagCorp had a negative equity of approximately \$14 million.

58. Metals is a closely held corporation that is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. As of January, 2001, Metals had a negative equity of approximately \$50 million.

59. Group's sales in 1999 were approximately \$2.5 billion.

60. Due to its ownership of all the capital stock of Metals, Group directs and controls the management and policies of Metals, including mergers, sales of assets, debt transactions, designation of Metals' board of directors and officers, and other corporate activities which, but for the control of Group and therefore of Rennert and the Trusts, would be conducted by Metals. Metals has paid excessive dividends to Group, which resulted in burdening MagCorp with excessive debt and contributing to its insolvency.

61. Metals' 1999 Annual Report to the Securities Exchange Commission ("SEC"), states:

All of [Metals'] issued and outstanding capital stock is owned by [Group,] which is owned by [the Trusts] established by Mr. Ira Leon Rennert, the Chairman and Chief Executive Officer of [Metals] and Group, for himself and members of his family. As a result of such ownership, Mr. Rennert controls [Metals] and its subsidiaries [then MagCorp and Sabel].

62. Rennert is the sole director of Metals, a holding company with no independent operations of its own. Rennert exercises significant control over Metals' officers by, *inter alia*, determining compensation for Metals' executive officers, which is fixed by negotiations between those officers and Rennert, with Rennert acting on behalf of Group.

63. As a result of transactions directed by Rennert, MagCorp is insolvent on a balance sheet basis and unable to pay its debts owed to the United States. Such transactions include, but are not limited to, significant indebtedness incurred in 1996, when Metals sold Senior Notes ("Notes") worth \$150 million, payable in 2003. To effectuate the sale, Metals pledged the net assets of MagCorp and Sabel as collateral, and committed significant cash flow from them to service the debt. Such guarantee obliged MagCorp and Sabel unconditionally and fully, jointly and severally, to pay semi-annual interest payments of more than \$8 million, and to redeem the

Notes when they become due. Metals used the proceeds from the 1996 sale largely to (a) help pay an \$88.9 million dividend to Group, (b) retire Metals' preferred stock (which entailed paying Group another \$8.5 million, as Group was the preferred stockholder), and (c) make certain compensation payments to officers of MagCorp. Sabel is no longer a subsidiary of Metals, and is no longer a guarantor of the Notes. As of December, 2000, MagCorp is the sole guarantor of the Notes.

64. These 1996 and 2000 actions, along with other transactions resulting in the transfer of significant assets of MagCorp to Metals, Group, and the officers of MagCorp had the effect of substantially reducing the assets of MagCorp, leaving the corporation undercapitalized or insolvent on a balance sheet basis.

65. The above-described incurrence of debt and simultaneous payment of dividends, as well as other transactions, constitute siphoning of MagCorp's, and Metals' corporate funds by Group, Rennert and the Trusts.

66. Metals' June 25, 1996 SEC Second Amended Registration Statement provides:

Under federal or state fraudulent conveyance laws, the Senior Notes might, under certain circumstances, be subordinated to existing or future indebtedness of [Metals] or found not to be enforceable in accordance with their terms. Under these statutes, if a court were to find that (i) the Senior Notes were incurred or the guarantees (the "Guarantees") of the Guarantors [then MagCorp and Sabel] were entered into with the intent of hindering, delaying or defrauding creditors or that [Metals] received less than a reasonably equivalent value or fair consideration for the Senior Notes and (ii) [Metals] or the Guarantors were insolvent immediately prior to the time the Senior Notes were issued and the Guarantees were incurred, as the case may be, were engaged in a business or transaction for which the assets remaining with [Metals] or the Guarantors constituted unreasonably small capital, or intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they matured, such court could void [Metals'] and the Guarantors' obligations under the

Senior Notes, or subordinate the Senior Notes and the Guarantees to all other indebtedness of [Metals] and the Guarantors, as the case may be Nor can there be any assurance that a court would not determine, regardless of whether [Metals] or the Guarantors were insolvent on the date the Senior Notes were issued, that the payments constituted fraudulent transfers on another ground.

67. Some of Metals' annual reports to the SEC (10-Ks) filed with regard to its 1996 incurrence of debt include explanations of and amendments to compensation agreements with certain of MagCorp's officers. The 10-Ks stated that, in anticipation of its incurrence of the \$150 million indebtedness, which was projected to leave Metals with a negative equity of \$50 million, MagCorp would pay certain officers bonuses exceeding \$1 million each, consistent with its employee participation agreements. Payments pursuant to such agreements, in conjunction with incurring debt, furthered MagCorp's and Metals' insolvencies.

68. Rennert, the Trusts, Group and Metals have so dominated and controlled the activities and assets of MagCorp that they have failed to respect MagCorp's separate existence. Disregarding MagCorp's separate existence and making the corporation insolvent by transfer of its assets to at least Group and Metals perpetuates a fraud or visits an injustice or an inequity on the United States.

69. Rennert's dealings with the assets of MagCorp constitutes a pattern of activity engaged in by Rennert with other corporations controlled by him of transferring the assets of a corporation to make the debtor corporation insolvent and defraud its creditors, including the United States.

70. Rennert controls the Trusts, Group, Metals and MagCorp as if they were one entity. Rennert, the Trusts, Group and Metals are MagCorp's alter egos. Rennert, the Trusts, Group and

Metals are liable for the acts and omissions of MagCorp.

71. The term "MagCorp" shall hereafter refer collectively to MagCorp, Metals, Group, the Trusts and Rennert.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Failure To Make Hazardous Waste Determinations As Generator)

72. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

73. MagCorp is a person who "generates" solid waste, within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).

74. Pursuant to 40 C.F.R. §§ 262.10(c) and 262.11; Utah Admin. R. R315-5-1(c) (renumbered as R315-5-1.10(c) (2000)), Utah Admin. R. R315-5-2 (renumbered as R315-5-1.1 (2000)), a person who generates solid waste must determine if that waste is a hazardous waste prior to making any decisions as to how to manage such waste, first by determining if the waste is excluded from regulation under 40 C.F.R. § 261.4 and Utah Admin. R. R 315-2-4; then by determining if the waste is listed as a hazardous waste in 40 C.F.R. Part 261, Subpart D, and Utah Admin. R. R315-2-10; then, by either applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used, or by testing the waste using specified sampling methods, determining if the waste is a characteristic hazardous waste under 40 C.F.R. Part 261, Subpart C and Utah Admin. R. R315-2-9.

75. MagCorp has never characterized its Pentapure Solids, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste, High Energy Scrubber Waste, or Ferrous and Ferric

Chloride Solids.

76. Each failure to make hazardous waste determinations as required by 40 C.F.R. § 262.11 and Utah Admin. R. R315-5-2 (renumbered as R315-5-1.11 (2000)), constitutes a separate violation of the regulations for each solid waste, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day for each day of violation prior to January 30, 1997, and \$27,500 per day for each such violation occurring after January 30, 1997.

SECOND CLAIM FOR RELIEF

(Violation of Standards Pertaining to Hazardous Waste Generators)

77. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

78. MagCorp is a person who “generates” solid waste, within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).

79. A person who generates hazardous waste may accumulate hazardous waste on-site for up to 90 days without a permit or interim status, provided that such person complies with certain standards, including, *inter alia*, the following:

**a. Personnel Training, Emergency Planning and Procedures
Planning and Prevention, and Land Disposal Restriction Notices**

80. Pursuant to 40 C.F.R. § 262.10(c) and Utah Admin. R. R315-5-1(c) (renumbered as R315-5-5-1.10(c) (2000)); and 40 C.F.R. § 262.34(a)(4), Utah Admin. R. R315-5-10 (renumbered as R315-5-3.34 (2000)), a person who generates hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, *inter alia*, the person complies with the requirements for owners or operators set

forth in 40 C.F.R. Part 265, Subpart C and Utah Admin. R. R315-7-10; 40 C.F.R. Part 265, Subpart D and Utah Admin. R. R315-7-11; 40 C.F.R. § 265.16 and Utah Admin. R. R315-7-9.7; and 40 C.F.R. § 268.7(a)(4) and Utah Admin. R. R315-13-1, pertaining to personnel training, emergency planning and procedures, preparedness and prevention, and land disposal restriction notices.

81. MagCorp generates and accumulates hazardous waste, and has generated and accumulated hazardous waste for at least the last five years, but on at least one occasion has failed to prepare a complete contingency plan, in violation of 40 C.F.R. § 265.52(a) and Utah Admin. R. R315-7-11.3(a); on at least one occasion, has failed to submit an updated contingency plan to local emergency response teams, in violation of 40 C.F.R. § 265.53 and Utah Admin. R. R315-7-11.4; on at least one occasion, has failed to provide an adequate training program for its employees, in violation of 40 C.F.R. § 265.16(a) and Utah Admin. R. R315-7-9.7(a); on at least one occasion, has failed to adequately document that its employees have taken the required training, in violation of 40 C.F.R. § 265.16(d)(3) and Utah Admin. R. R315-7-9.7(d)(3); and has failed to maintain documentation in compliance with land disposal restrictions for at least 4 shipments of its hazardous wastes, in violation of 40 C.F.R. § 268.7(a)(8) and Utah Admin. R. R315-13.

b. Standards Pertaining to Hazardous Waste Manifests

82. Pursuant to 40 C.F.R. §§ 262.10(c), 262.10(h) and 262.20 and Utah Admin. R. R315-5-1(c) (renumbered as R315-5-1.10(c) (2000)), R315-5-1(h) (renumbered as R315-5-1.10(h) (2000)) and R315-4-2(a) - (d), (1) (renumbered as R315-5-2.20 (2000)), a person who generates hazardous waste may accumulate hazardous waste on-site for 90 days or less without a

permit or without having interim status provided that, *inter alia*, that person, when shipping hazardous waste from its facility, complies with requirements pertaining to, *inter alia*, record-keeping, and preparation and maintenance of copies of hazardous waste manifests. MagCorp ships and has shipped hazardous waste from its facility, but failed to properly complete at least 5 manifests, in violation of 40 C.F.R. § 262.20 and Utah Admin R. R315-4-2(a) - (d), (1) (renumbered as R315-5-2.20 (2000)); and failed to properly retain at least 1 manifest, during the time period from September 1995 through April 1999, in violation of 40 C.F.R. § 262.40 and Utah Admin. R. R315-5-5 (renumbered as R315-5-4.40 (2000)).

c. Standards Pertaining to Inspections

83. Pursuant to 40 C.F.R. § 262.10(c) and 262.34(a)(1)(i); Utah Admin. R. R315-5-1(c) (renumbered as R315-5-1.10(c) (2000)) and R315-5-10 (renumbered as R315-5-3.34 (2000)), a person who generates hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, *inter alia*, the person complies with the requirements set forth in 40 C.F.R. Part 265, Subpart I, Utah Admin. R. R315-7-16.1 pertaining to conduct of weekly inspections.

84. MagCorp generates and accumulates hazardous waste on-site, and has generated and accumulated hazardous waste on-site, but failed to conduct at least 5 weekly inspections during the time period from September 1995 through April 1999, in violation of 40 C.F.R. §§ 262.34(d)(2) and 265.174; Utah Admin. R. R315-5-10 (renumbered as R315-5-3.34 (2000)) and R315-7-16.5.

d. Failure to Properly Manage Hazardous Waste in Containers

85. Pursuant to 40 C.F.R. §§ 262.10(c) and 262.34(a)(1)(i); Utah Admin. R. R315-5-1(c)

(renumbered as R315-5-1.10(c) (2000)) and R315-5-10 (renumbered as R315-5-3.34 (2000)), a person who generates hazardous waste may accumulate such waste on-site for 90 days or less without a permit or without having interim status, provided that such person complies with, *inter alia*, the requirements pertaining to use and management of containers set forth in 40 C.F.R. Part 265, Subpart I; Utah Admin. R. R315-7-16.

86. 40 C.F.R. § 265.173 and Utah Admin. R. R315-7-16.4 require that containers holding hazardous waste be closed during storage, except when necessary to add or remove waste.

87. 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b) define a container as any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

88. During an April, 1999 inspection, an EPA inspector observed that MagCorp stores at least 1 drum of carbon tetrachloride waste in its 90-day storage yard; stores Pentapure Solids in 3 open sumps; stores Ferrous and Ferric Chloride Solids on an open roll-off; and that one of MagCorp's carbon tetrachloride drums had a hole in the bung cap, in violation of 40 C.F.R. § 265.173 and Utah Admin. R. R315-7-16.4.

e. Violation of Requirements Pertaining to Treatment in Containers

89. Pursuant to 40 C.F.R. §§ 262.10(c) and 262.34(a)(1)(i); Utah Admin. R. R315-5-1(c) (renumbered as R315-5-1.10(c) (2000)) and R315-5-10 (renumbered as R315-5-3.34 (2000)), a generator may treat hazardous waste it accumulates on-site for 90 days or less without a permit or without having interim status provided that, *inter alia*, it complies with the requirements set forth in 40 C.F.R. Part 262, and Part 265, Subpart I; Utah Admin. R. R315-5 and R315-7-16.

90. MagCorp has acknowledged that it treats carbon tetrachloride in containers in its

90-day yard prior to shipment.

91. During the last five years, MagCorp has failed to maintain the containers in which it is treating the carbon tetrachloride in good condition, and keep the containers closed, as required by 40 C.F.R. Part 265, Subpart I and Utah Admin. R. R315-7-16.

92. During the last five years, MagCorp has treated carbon tetrachloride in a container in violation of the regulations allowing treatment for 90 days without a permit and without interim status. 40 C.F.R. §§ 262.34(a)(1)(i) and 268.7(a)(5); Utah Admin. R. R315-5-10 (renumbered as R315-5-3.34 (2000)), R315-13-1.

93. Each day which MagCorp violates or has violated the above-enumerated requirements for each solid waste constitutes a separate violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day for each day of violation prior to January 30, 1997, and \$27,500 per day for each such violation occurring after January 30, 1997.

THIRD CLAIM FOR RELIEF

(Violation of Standards Pertaining to Generators of Used Oil)

94. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

95. MagCorp is a generator of "used oil," within the meaning of 40 C.F.R. § 279.20(a) and Utah Admin. R. R315-15-2(a).

96. "Used oil" is defined in 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b) to mean "any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities."

97. Pursuant to 40 C.F.R. § 279.22 and Utah Admin. R. R315-15-2.3, generators of used oil must, among other things, store used oil in containers that are in good condition and that are clearly marked and labeled "Used Oil."

98. During an April, 19, 1999 inspection, an EPA inspector observed that MagCorp had failed to label a 500-gallon used oil tank, in violation of 40 C.F.R. § 279.22(c)(1) and Utah Admin. R. R315-15-2.3(c)(1).

99. MagCorp's failure to properly label an above-ground used oil tank, in violation of 40 C.F.R. § 279.22(c)(1) and Utah Admin. R. R315-15-2.3(c)(1), constitutes a violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$27,500 for the violation occurring on April 19, 1999.

FOURTH CLAIM FOR RELIEF
(Illegal Treatment of Hazardous Waste)

100. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

101. RCRA sections 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), 40 C.F.R. §§ 270.1(c) and § 270.71(a); and Utah Code Ann. § 19-6-108(3), Utah Admin. R. R315-3-3(m) - (n) (renumbered as R315-3-1.1(a) (2000)), R315-3-30(a) (renumbered as R315-3-7.2(a) (2000)), prohibit a person from treating hazardous waste without first obtaining a permit or interim status.

102. MagCorp manages Pentapure Solids, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste and High Energy Scrubber Waste at its facility. EPA sampling shows that each of these are hazardous wastes.

103. RCRA Section 1004(34) and 40 C.F.R. §§ 260.10, 270.2 and Utah Admin. R. R315-1-1(b), R315-1-1(d), generally define treatment, when used in connection with hazardous waste, as including any method, technique, or process designed to change the physical, chemical, or biological character or composition of the hazardous waste so as to render the waste nonhazardous, amenable for storage, or reduced in volume.

104. By disposing liquid hazardous wastes for at least the last five years in its Chlorine Plant Ditch, Central Ditch, and Red River/400-Acre Pond, MagCorp is using evaporation, and/or seepage into the groundwater, to reduce their volume. These activities constitute treatment.

105. By commingling its non-exempt and exempt hazardous liquid wastes for at least the last five years in its Chlorine Plant Ditch, Central Ditch, and/or Red River/400-Acre Pond, MagCorp is diluting hazardous wastes at its facility, which activity constitutes treatment pursuant to 40 C.F.R. § 268.3 and Utah Admin. R. R315-13-1.

106. MagCorp did not seek or obtain a permit from EPA and/or the State of Utah to treat hazardous waste at its facility, nor does MagCorp qualify for interim status.

107. Each day MagCorp treats or has treated each hazardous waste without a permit or without qualifying for interim status in its Chlorine Plant Ditch, Central Ditch, Red River/400-Acre Pond constitutes a separate violation of RCRA Section 3005, 42 U.S.C. § 6925, 40 C.F.R. §§ 270.1(c) and 270.71(a), and Utah Code Ann. § 19-6-108, Utah Admin. Rule R315-3-3(m) - (r) (renumbered as R315-3-1.1(a) (2000)) and R 315-3-30(a) (renumbered as R315-3-7.2(a) (2000)), for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30,

1997, in accordance with Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

FIFTH CLAIM FOR RELIEF
(Illegal Disposal of Hazardous Waste)

108. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

109. RCRA Sections 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. §§ 270.1(c) and 270.71(a); and Utah Code Ann. 19-6-108, Utah Admin. R. R315-3-3(m) - (r) (renumbered as R315-3-1.1(a) (2000)) and R315-3-30(a) (renumbered as R315-3-7.2(a) (2000)), prohibit a person from disposing hazardous without first obtaining a permit or interim status.

110. RCRA Section 1004(3) and 40 C.F.R. §§ 260.10 and 270.2 and Utah Admin. R. R315-1-1(b), R315-1-1(d), generally define disposal as the discharge, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

111. MagCorp disposes, and has for at least the last five years disposed, wastes that EPA sampling shows are hazardous, including Chlorine Plant Water Wash Column, in its Chlorine Plant Ditch.

112. MagCorp disposes, and has for at least the last five years disposed, wastes that EPA sampling shows are hazardous, including Chlorine Reduction Burner Waste, in its Central Ditch.

113. MagCorp disposes, and has for at least the last five years, disposed, wastes that EPA sampling shows are hazardous, including waste containing MagCorp's Pentapure Solids, and MagCorp's High Energy Scrubber Waste, in the Red River.

114. MagCorp disposes, and has for at least the last five years disposed, each of the above-listed hazardous wastes in the Red River/400-Acre Pond. EPA sampling of Pond contents shows that the Pond contains hazardous wastes.

115. MagCorp disposes, and has for at least the last five years disposed, Ferrous and Ferric Chloride Solids, which EPA sampling shows are hazardous, in its Landfill.

116. MagCorp's disposal of hazardous wastes in its Chlorine Plant Ditch, Central Ditch, Red River/400-Acre Pond, and Landfill constitutes disposal of hazardous waste without a permit or without qualifying for interim status.

117. MagCorp did not seek or obtain a permit from EPA or the State of Utah to dispose hazardous waste at its facility, nor does MagCorp qualify for interim status.

118. Each day MagCorp disposes or has disposed each hazardous waste without a permit or without qualifying for interim status in its Chlorine Plant Ditch, Central Ditch, the Red River/400-acre pond, and/or Landfill constitutes a separate violation of RCRA Section 3005, 42 U.S.C. § 6925, 40 C.F.R. §§ 270.1(c) and 270.71(a), and Utah Code Ann. § 19-6-108, Utah Admin. R. R315-3-3(m) - (r) (renumbered as R315-3-1.1(a) (2000)) and R315-3-30(a) (renumbered as R315-3-7.2(a) (2000)), for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997, in accordance with Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

SIXTH CLAIM FOR RELIEF

(Failure to Comply with Standards for Treatment, Storage
and Disposal of Hazardous Waste in Surface Impoundments)

119. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

120. MagCorp treats, stores, or disposes, and has for at least the last five years treated, stored or disposed, hazardous wastes in its Chlorine Plant Ditch, Central Ditch, and Red River/400-Acre Pond, each of which constitute a surface impoundment within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).

121. RCRA Section 3004(o) and 40 C.F.R. §§ 264.220, 265.220; Utah Admin. R. R315-8-11.1, R315-7-18.1, prohibit MagCorp from treating, storing or disposing certain hazardous wastes in the Chlorine Plant Ditch, the Central Ditch, or the Red River/400-Acre Pond unless these units meet specified design requirements, including double liners, and groundwater monitoring.

122. The Chlorine Plant Ditch, Central Ditch, and Red River/400-Acre Pond are unlined, and do not have groundwater monitoring systems.

123. Each day which MagCorp owned and operated or owns and operates the Chlorine Plant Ditch, the Central Ditch, and/or the Red River/400-Acre Pond in violation of each of the above-specified requirements constitutes a separate violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997.

SEVENTH CLAIM FOR RELIEF
(Failure to Close Surface Impoundments)

124. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein

by reference.

125. Under 40 C.F.R. §§ 264.113(a) and 265.113(a) and Utah Admin. R. R315-8-7 and R315-7-14, a facility which has neither interim status nor a permit for its management of hazardous wastes in a surface impoundment is required to cease management of hazardous wastes in that impoundment, and close it within 90 days of the date upon which interim status or a permit was to be obtained.

126. MagCorp is, and has for at least the last five years been, required to obtain a permit or comply with interim status requirements to treat, store, and/or dispose Pentapure Solids, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste, and High Energy Scrubber Waste in the Chlorine Plant Ditch, the Central Ditch, and/or the Red River/400-Acre Pond. MagCorp has failed to cease its management of Pentapure Solids, Chlorine Reduction Burner Waste, High Energy Scrubber Waste and Chlorine Plant Water Wash Column in its Chlorine Plant Ditch, Central Ditch, and/or the Red River/400-Acre Pond, or to close those units, in violation of 40 C.F.R. §§ 264.113(a) and 265.113(a) and Utah Admin. R. R315-8-7 and R315-7-14.

127. Each day which MagCorp owns and operates or owned and operated the Chlorine Plant Ditch, the Central Ditch, and/or the Red River/400-Acre Pond without closing these units constitutes a separate violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997.

EIGHTH CLAIM FOR RELIEF

(Failure to Comply with Standards for Treatment, Storage
and Disposal of Hazardous Waste in Landfills)

128. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

129. MagCorp disposes, and has for at least the last five years disposed, Ferrous and Ferric Chloride Solids in its on-site industrial Landfill.

130. MagCorp's Landfill constitutes a "Landfill," within the meaning of 40 C.F.R. § 260.10 and Utah Admin. Code R. R315-1-1(b).

131. RCRA Section 3004(o) and 40 C.F.R. §§ 264.300 and 265.300; Utah Admin. R. R315.8-14.1 and R315-7-21.1, prohibit a person from treating, storing or disposing certain hazardous wastes in Landfills unless these units meet specified design requirements, including liners and leachate collection and removal systems.

132. MagCorp's Landfill is unlined, and has no leachate collection or removal system.

133. Each day MagCorp owned and operated or owns and operates its Landfill in violation of each of the above-specified requirements constitutes a separate violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997.

NINTH CLAIM FOR RELIEF
(Illegal Land Disposal)

134. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

135. RCRA Section 3004(k), 42 U.S.C. § 6924(k) and 40 C.F.R. § 268.2(c); Utah Admin. R. R315-13-1, generally define "land disposal" as the placement of hazardous waste in or on the land, including, but not limited to, placement in a landfill or a surface impoundment.

136. MagCorp places, and has for at least the last five years placed, its Chlorine Plant Water Wash Column, which EPA sampling shows is hazardous, in its Chlorine Plant Ditch.

137. MagCorp places, and has for at least the last five years placed, its Chlorine Reduction Burner Waste, which EPA sampling shows is hazardous, in its Central Ditch.

138. MagCorp places, and has for at least the last five years placed, its Pentapure Solids and High Energy Scrubber Waste, which EPA sampling shows are hazardous, in the Red River.

139. MagCorp places, and has for at least the last five years placed, each of the above-listed hazardous wastes in the Red River/400-Acre Pond. EPA sampling of Pond contents shows that the Pond contains hazardous wastes.

140. MagCorp places, and has for at least the last five years placed, Ferrous and Ferric Chloride Solids, which EPA sampling shows is hazardous, in its Landfill.

141. MagCorp's Chlorine Plant Ditch, Central Ditch, Red River/400-Acre Pond, and/or Landfill constitute land-disposal units within the meaning of RCRA Section 3004(k), 42 U.S.C. § 6924(k) and 40 C.F.R. § 268.2(c); Utah Admin. R. R315-13-1.

142. RCRA Section 3004(m), 42 U.S.C. § 6924(m) and 40 C.F.R. §§ 268.40 to 268.44; Utah Admin. R. R315-13-1, prohibit certain hazardous wastes from being land-disposed unless specified treatment requirements are met.

143. MagCorp is and has been prohibited from land-disposing its Pentapure Solids, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste, High Energy Scrubber

Waste and Ferrous and Ferric Chloride Solids, unless these wastes were first pre-treated to meet specified treatment requirements set forth in 40 C.F.R. § 268 and Utah Admin. R. R315-13.

144. MagCorp has not pre-treated its Pentapure Solids, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste, High Energy Scrubber Waste or Ferrous or Ferric Chloride Solids before land-disposing them in its Ditches, 400-Acre Pond, and Landfill.

145. Each day which MagCorp illegally land-disposes or has illegally land-disposed each hazardous waste by failing to treat each to meet specified treatment requirements constitutes a separate violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997.

TENTH CLAIM FOR RELIEF

(Violation of Groundwater Monitoring Requirement Applicable to Owner/Operators)

146. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

147. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

148. For at least the last five years, MagCorp has accumulated hazardous waste for more

than ninety days without an extension. Thus, MagCorp is subject to regulation under 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

149. Pursuant to 40 C.F.R. §§ 264.1, 264.90, 265.1 and 265.90, and Utah Admin. R. R315-8-1, R315-8-6.1, R315-7-8, and R315-7-13.1, as the owner/operator of a facility that treats, stores or disposes of hazardous waste, MagCorp is required to, *inter alia*, implement a groundwater monitoring program to detect, characterize, and respond to releases from all solid waste management units and specified regulated units, including surface impoundments and landfills, into the uppermost aquifer underlying the impoundments.

150. MagCorp treats, stores or disposes, and for at least the last five years has treated, stored or disposed, its Chlorine Plant Water Wash Column, which EPA sampling shows is hazardous, in its Chlorine Plant Ditch.

151. MagCorp treats, stores or disposes, and for at least the last five years has treated, stored or disposed, its Chlorine Reduction Burner Waste, which EPA sampling shows is hazardous, in its Central Ditch.

152. MagCorp treats, stores or disposes, and for at least the last five years has treated, stored or disposed, its Pentapure Solids and High Energy Scrubber Waste, which EPA sampling shows are hazardous, in the Red River.

153. MagCorp treats, stores or disposes, and for at least the last five years has treated, stored or disposed, each of the above-mentioned hazardous wastes in the Red River/400-Acre Pond. EPA sampling of Pond contents shows that the Pond contains hazardous wastes.

154. MagCorp disposes, and has for at least the last five years disposed, spent Ferrous and Ferric Chloride Solids, which EPA sampling shows is hazardous, in its Landfill

155. The Chlorine Plant Ditch, Central Ditch, and Red River/400-Acre Pond are surface impoundments, within the meaning of 40 C.F.R. §260.10 and Utah Admin. R. R315-1-1(b).

156. MagCorp's Landfill meets the definition of a landfill, within the meaning of 40 C.F.R. §260.10 and Utah Admin. R. R315-1-1(b).

157. Until 1986, MagCorp disposed hazardous waste in its 1200-acre pond. MagCorp disposes, and for at least the last five years disposed, hazardous constituents in its sumps and smut piles. The smut piles, sumps, and units into which MagCorp disposes and disposed hazardous waste constitute solid waste management units, and are subject to the corrective action requirements set forth in RCRA § 3004(u), (v), 40 C.F.R. § 264.552 - 552; Utah Code Ann. §19-6-105(d), and Utah Admin. R. R315-8-21, and R 315-7-8.1(b).

158. For at least the last five years, MagCorp has not had a groundwater monitoring program.

159. Each day which MagCorp owned and operated or owns and operates its facility without the required groundwater monitoring program constitutes a separate violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997.

ELEVENTH CLAIM FOR RELIEF

(Violation of Requirement that Owner/Operators File Closure Plans)

160. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

161. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

162. For at least the last five years, MagCorp has accumulated hazardous wastes for more than ninety days without an extension. Thus, MagCorp is subject to 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

163. Pursuant to 40 C.F.R. §§ 264.1, 264.112, 265.1 and 265.112 and Utah Admin. R. R315-8-1, R315-8-7, R315-7-8, R315-7-14, as the owner/operator of a facility that treats, stores or disposes hazardous wastes, MagCorp is and has been required to have a written closure plan or plans meeting the requirements of 40 C.F.R. §§ 264.112(b) and 265.112(b) and Utah Admin. R. R315-8-7 and R315-7-14.

164. MagCorp treats, stores or disposes, and for at least the last five years has treated, stored or disposed, Pentapure Solids, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste, High Energy Scrubber Waste, and Ferrous and Ferric Chloride Solids, each of which EPA sampling shows are hazardous, at its facility.

165. MagCorp does not have and for at least the last five years has not had a written closure plan or plans for its facility.

166. Each day which MagCorp owned and operated or owns and operates its facility without the required closure plan constitutes a separate violation of the regulations, for which

MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997.

TWELFTH CLAIM FOR RELIEF

(Violation of Requirement that Owner/Operators Provide Financial Assurances)

167. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

168. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

169. For at least the last five years, MagCorp has accumulated hazardous wastes for more than ninety days without an extension. Thus, MagCorp is subject to 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

170. MagCorp treats, stores or disposes and for at least the last five years has treated, stored or disposed, Pentapure Solids, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste, High Energy Scrubber Waste, and Ferrous and Ferric Chloride Solids, each of which EPA sampling shows are hazardous, at its facility.

171. Pursuant to 40 C.F.R. §§ 264.1, 264.140, 265.1, and 265.140 and Utah Admin. R. R315-8-1, R315-8-8, R315-7-8.1(b) and R315-7-15, as the owner/operator of a facility that

treats, stores or disposes hazardous waste, as of October 24, 1984, MagCorp was required to provide financial assurance for closure and post-closure care for its facility.

172. 40 C.F.R. §§ 264.142, 265.142 and Utah Admin. R. R315-8-8 and R315-7-15 require that the owner or operator of a facility have a detailed written estimate, in current dollars, of the cost of closing the facility at the point in the facility's active life when the closure would be most expensive.

173. 40 C.F.R. §§ 264.143, 265.143 and Utah Admin. R. R315-8-8 and R315-7-15 require that the owner or operator of the facility establish financial assurance for closure of the facility in accordance with the written estimate discussed above.

174. MagCorp has never provided assurance that it can finance closure of the facility if closure becomes necessary.

175. Each day which MagCorp owned or operated or owns and operates its facility without providing the required financial assurances constitutes a separate violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997.

THIRTEENTH CLAIM FOR RELIEF

(Violation of Requirement that Owner/Operators Minimize Releases)

176. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

177. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide

that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

178. For at least the last five years, MagCorp has accumulated hazardous wastes for more than ninety days without an extension. Thus, MagCorp is subject to 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

179. 40 C.F.R. §§ 264.31, 265.31 and Utah Admin. R. R315-8-3.2, R315-7-10.2 require owners and operators of hazardous waste management facilities, *inter alia*, to maintain and operate their facilities to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

180. In 1986, MagCorp's 1200-Acre surface impoundment washed out, and into the Great Salt Lake. For at least the last five years, MagCorp has not operated its 400-Acre Pond, or other solid waste management units, in a manner so as to prevent future migration.

181. Each day which MagCorp owned and operated or owns and operates its facility without minimizing the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents constitutes a separate violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30,

1997.

FOURTEENTH CLAIM FOR RELIEF

(Violation of Requirement that Owner/Operators Maintain Operating Records)

182. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

183. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

184. For at least the last five years, MagCorp has accumulated hazardous wastes for more than ninety days without an extension. Thus, MagCorp is subject to 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

185. Pursuant to 40 C.F.R. §§ 264.1, 264.73, 265.1 and 265.73 and Utah Admin. R. R315-8-1, R315-8-5.3, R315-7-8.1(b), and R315-7-12.4, as of October 10, 1984, MagCorp or its predecessor were and are required to keep written operating records that, *inter alia*, describe the quantity of each hazardous waste at the facility, the location of each, the results of waste determinations, results of inspections, and sampling and analytical results.

186. For at least the last five years, MagCorp has failed to maintain operating records.

187. Each day which MagCorp owned and operated or owns and operates its facility without maintaining the required operating records constitutes a separate violation of the

regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997.

FIFTEENTH CLAIM FOR RELIEF

(Violation of Requirement that Owner/Operators Analyze Hazardous Wastes)

188. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

189. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

190. For at least the last five years, MagCorp has accumulated hazardous wastes for more than ninety days without an extension. Thus, MagCorp is subject to 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

191. 40 C.F.R. §§ 264.13 and 265.13 and Utah Admin. R. R315-8-2.4 and R315-7-9.4, generally require that an owner or operator of a hazardous waste facility analyze hazardous waste before treating, storing, or disposing it, as often as necessary to ensure that the analyses are accurate.

192. For at least the last five years, MagCorp has not had a formal waste monitoring or

sampling program.

193. Each day for which MagCorp owned and operated or owns and operates its facility without a waste analysis program constitutes a separate violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997.

SIXTEENTH CLAIM FOR RELIEF

(Failure to Comply with General Facility Standards Applicable to Owners/Operators)

194. Plaintiff realleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

195. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

196. For at least the last five years, MagCorp has accumulated hazardous wastes for more than ninety days without an extension. MagCorp is violating or has violated the requirements of 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3, applicable to owner/operators, including the following:

a. **Preventing Entry of Persons or Livestock**

197. 40 C.F.R. §§ 264.14 and 265.14 and Utah Admin. R. R315-8-2.5 and R315-7-9.5,

generally require that an owner or operator of a hazardous waste facility prevent the entry of persons or livestock onto the active portion of his facility unless he can demonstrate that the persons or livestock will not come in contact with hazardous waste in such portion.

198. MagCorp has acknowledged that it has granted permission for cattle grazing on its property. MagCorp has never demonstrated that livestock will not come in contact with hazardous waste in active portions of its facility.

b. 100-Year Floodplain

199. 40 C.F.R. §§ 264.18(b) and Utah Admin. R. R315-8-2.9, generally require that a facility located in a 100-year floodplain be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

200. In 1986, the 1200-acre impoundment was washed out, when the waters of the Great Salt Lake rose. The new 400-Acre impoundment is located next to the 1200-acre impoundment, in a 100-year floodplain.

201. For at least the last five years, MagCorp has failed to design, construct, maintain and operate the new 400-acre impoundment so as to prevent washout of any hazardous waste by a 100-year flood.

c. Construction Quality Assurance Program

202. 40 C.F.R. §§ 264.19 and 265.19 and Utah Admin. R. R315-8-2.10 and R315-7-9.10, generally require a construction quality assurance program for all surface impoundments, waste piles, and landfill units that will include, *inter alia*, observations, inspections, tests and measurements sufficient to ensure structural stability and integrity of such units, and proper construction of liners, leachate collection and removal systems, and leak detection systems for

such units. The regulations also prohibit, *inter alia*, receipt of waste in such units until the owner or operator has submitted a certified construction quality assurance program to EPA.

203. MagCorp has never provided quality assurance for its units which receive hazardous waste.


204. MagCorp's failure to provide quality assurance for its units which receive hazardous waste constitutes a separate violation of the regulations, for which MagCorp is subject to injunctive relief, and for civil penalties not to exceed \$25,000 per day of noncompliance for each such violation which occurred prior to January 30, 1997, and \$27,500 per day for each such violation which occurred after January 30, 1997.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court:

- a. Assess civil penalties against MagCorp, in an amount not to exceed Twenty Five Thousand Dollars (\$25,000) for each day of each violation prior to January 30, 1997 and not to exceed Twenty Seven Thousand and Five Hundred Dollars (\$27,500) for each day of each violation after January 30, 1997 of RCRA and Utah hazardous waste regulations as alleged in this complaint;
- b. Grant injunctive relief to bring MagCorp into compliance with RCRA and all applicable environmental laws, and to submit a plan with enforceable schedules to segregate and separately manage Bevill-excluded wastes; properly manage, treat, store, dispose, or recycle non-excluded wastes; characterize the nature and extent of releases; and perform site-wide corrective action for all solid waste management units;
- c. Pierce the corporate veil to hold liable Metals, Group, the Trusts, D'Atri, Rennert, and Unidentified Trustees for the debts and liabilities of MagCorp; and
- d. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

 1/9/00

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

 1/12/01

BERNICE I. CORMAN

Trial Attorney

Environmental Enforcement Section

Environment and Natural Resources Division

United States Department of Justice

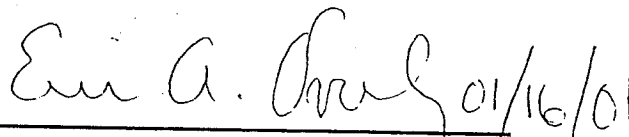
P.O. Box 7611, Ben Franklin Station

Washington, D.C. 20044

(202) 514-1543

PAUL M. WARNER

United States Attorney

 01/16/01

ERIC A. OVERBY

Assistant United States Attorney

OF COUNSEL:

ANDREW LENSINK, Esq.

Office of Enforcement, Compliance and Environmental Justice

U.S. Environmental Protection Agency, Region VIII

999 18th Street, Suite 300

Denver, Colorado 80202-2466

LESLIE OIF, Esq.

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, N.W. (2246A)

Washington, D.C. 20460

United States District Court
CENTRAL DISTRICT OF UTAH

SUMMONS IN A CIVIL ACTION

UNITED STATES OF AMERICA,

v.

CASE NUMBER:

MAGNESIUM CORPORATION OF
AMERICA, RENCO METALS, INC.,
et al., The RENCO GROUP, INC.,
The RENNERT TRUSTS, JUSTIN W.
D'ATRI AND UNIDENTIFIED TRUSTEES,
and IRA L. RENNERT.

2:01CV0040 B

TO: (Name and Address of Defendant)

Magnesium Corporation of America
Tony Rudman, Esquire
General Counsel, MagCorp
238 N. 220 W.
Salt Lake City, Ut 84116

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Paul M. Warner, US Attorney
Eric A. Overby, AUSA
185 South State Street, #400
Salt Lake City, Utah 84111

Answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

MARKUS B. ZIMMER

DATE: 1/16/01

[Signature]
DEPUTY CLERK

United States District Court

CENTRAL

DISTRICT OF

UTAH

SUMMONS IN A CIVIL ACTION

UNITED STATES OF AMERICA,

V.

CASE NUMBER:

MAGNESIUM CORPORATION OF
AMERICA, RENCO METALS, INC.,
et at., The RENCO GROUP, INC.,
The RENNERT TRUSTS, JUSTIN W.
D'ATRI AND UNIDENTIFIED TRUSTEES,
and IRA L. RENNERT.

TO: (Name and Address of Defendant)

Mr. Justin W. D'Atri, Esq.
805 3rd Avenue
New York, New York 10022

2:01 CV 0040 B

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Paul M. Warner, US Attorney
Eric A. Overby, AUSA
185 South State Street, #400
Salt Lake City, Utah 84111

20

in answer to the complaint which is herewith served upon you, within _____ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

MAEKUS B. DIMMER

DATE

1/16/01

DEPUTY CLERK

United States District Court
CENTRAL DISTRICT OF UTAH

SUMMONS IN A CIVIL ACTION

UNITED STATES OF AMERICA,

v.

CASE NUMBER:

MAGNESIUM CORPORATION OF
AMERICA, RENCO METALS, INC.,
et at., The RENCO GROUP, INC.,
The RENNERT TRUSTS, JUSTIN W.
D'ATRI AND UNIDENTIFIED TRUSTEES,
and IRA L. RENNERT.

2:01 CV 0040 B

TO: (Name and Address of Defendant)

The Rennert Group, Inc.
Attn: Ira L. Rennert
Chairman and Chief Executive Officer
30 Rockefeller Plaza, Suite 4225
New York, New York 10021

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Paul M. Warner, US Attorney
Eric A. Overby, AUSA
185 South State Street, #400
Salt Lake City, Utah 84111

Answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

MARCOUS B. ZIMMER

1/16/01
DATE

DEPUTY CLERK

United States District Court

CENTRAL UTAH

DISTRICT OF

UNITED STATES OF AMERICA,

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER:

MAGNESIUM CORPORATION OF
AMERICA, RENCO METALS, INC.,
et at., The RENCO GROUP, INC.,
The RENNERT TRUSTS, JUSTIN W.
D'ATRI AND UNIDENTIFIED TRUSTEES,
and IRA L. RENNERT.

2:01 CV 0040 B

TO: (Name and Address of Defendant)

Mr. Ira L. Rennert

625 Park Avenue

New York, New York 10021

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

U.S. Attorney's Office
Paul M. Warner, US Attorney
Eric A. Overby, AUSA
185 South State Street, #400
Salt Lake City, Utah 84111

in answer to the complaint which is herewith served upon you, within 20 days after service of
his summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

MARKUS E. ZIMMER

DATE

1/12/61

DEPUTY CLERK

United States District Court

CENTRAL UTAH

DISTRICT OF _____

SUMMONS IN A CIVIL ACTION

UNITED STATES OF AMERICA,

V.

CASE NUMBER:

MAGNESIUM CORPORATION OF
AMERICA, RENCO METALS, INC.,
et al., The RENCO GROUP, INC.,
The RENNERT TRUSTS, JUSTIN W.
D'ATRI AND UNIDENTIFIED TRUSTEES,
and IRA L. RENNERT.

2:01 CV 0040 B

TO: (Name and Address of Defendant)
Renco Metals, Inc.
Tony Rudman, Esquire
General Counsel, MagCorp
238 N. 220 W.
Salt Lake City, Ut 84116

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Paul M. Warner, US Attorney
Eric A. Overby, AUSA
185 South State Street, #400
Salt Lake City, Utah 84111

in answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

MARCO B. ZIMMER

DATE 1/16/17X [Signature]
DEPUTY CLERK

JS 44
(Rev. 07/86)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the Federal Rules of Civil Procedure, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Salt Lake
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

U.S. Attorney's Office
Eric A. Overby, AUSA
185 South State St., #400
Salt Lake City, Utah 84111

DEFENDANTS

MAGNESIUM CORPORATION OF AMERICA,
RENCO METALS, INC., et al.
RENCO GROUP, INC., THE RENWART TRUSTS,
JUSTIN W. D'ATRI AND UNIDENTIFIED TRUSTEES,
and IRA L. RENNERT.
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Salt Lake
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

2:01 CV 0040 B

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

42 U.S.C. §§ 6901 et seq.
Resource Conservation and Recovery Act

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Motor Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Shareholders Suits 190 Other Contract 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 28 USC 158 <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HRA (13954) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DRC (405(g)) <input type="checkbox"/> 864 DRC (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party <input type="checkbox"/> 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

I. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

I. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23DEMAND \$
\$25,000 per dayCheck YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

RELATED CASE(S) (See instructions):

ANY US v. Magcorp

JUDGE Campbell

DOCKET NUMBER 2:98CV00281

SIGNATURE OF ATTORNEY OF RECORD

Service of the Summons and Complaint was made by me¹

DATE _____

NAME OF SERVER

TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted:

☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL	100
-------	-----

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on.

Date _____

Signature of Server

Address of Server

Exhibit B

ORIGINAL

JAMES B. COMEY
United States Attorney for the
Southern District of New York
Attorney for the United States of America
By: Edward Chang (EC-8218)
Assistant United States Attorney
33 Whitehall Street -- 8th floor
New York, NY 10004
Telephone: (718) 422-5628

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	x	Chapter 11
In re	:	
	:	
MAGNESIUM CORPORATION	:	Case No. 01-14312 (REG)
OF AMERICA,	:	
	:	
Debtor.	:	
-----	x	

**REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSES OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

A. Preliminary Statement

1. This request for payment of administrative expenses ("Request") is filed by the United States at the request of the United States Environmental Protection Agency ("EPA"). The Attorney General is authorized to make this Request on behalf of the United States. This Request relates to:

(a) the liability of debtors Magnesium Corporation of America ("MagCorp") and Renco Metals, Inc. ("Metals") (collectively, "Debtors") for civil penalties and injunctive relief under Section 3008 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 ("HSWA") (collectively "RCRA"), 42 U.S.C. § 6928, with respect to violations of federal and State of Utah

Ex B

hazardous waste regulations at the facility ("Facility") located at Rowley, Utah, approximately 23 miles west of Grantsville, Utah; and

(b) MagCorp's liability under an Administrative Order on Consent, Docket No. RCRA-8-2000-16, effective June 22, 2001 ("AOC"), to address an imminent and substantial endangerment from the handling of solid waste at the Facility containing high concentrations of dioxins, furans, and hexachlorobenzene ("HCB"); and

(c) MagCorp's liability under an Administrative Order, Docket No. RCRA-8-2001-05, issued June 15, 2001 ("AO"), to address an imminent and substantial endangerment from the handling of solid waste at the Facility containing dioxins, HCB, polychlorinated biphenyls, arsenic, and chromium.

2. The Facility is located on the southwest shore of the Great Salt Lake in Utah. The Facility processes brine from the Great Salt Lake and produces magnesium and magnesium alloys, liquid chlorine, hydrochloric acid, ferrous and ferric chloride, calcium chloride, and potassium salts.

3. The Facility generates at least five different hazardous wastes and/or treats, stores, or disposes of them in landfills, ditches, and surface impoundments located there and has done so since at least 1989.

4. The Facility generates and handles solid waste containing dioxins, furans, HCB, polychlorinated biphenyls, arsenic, and chromium.

5. Until June 24, 2002, the Facility was owned by MagCorp, which is a wholly owned subsidiary of Metals.

B. Basis Of EPA's Claim For Violations of Hazardous Waste Requirements

6. The basis for Debtors' liability at the Facility under Section 3008 of RCRA, 42 U.S.C. § 6928, is as follows:

(a) On or about January 16, 2001, the United States commenced a lawsuit against, MagCorp and Metals, among other parties, in the United States District Court for the District of Utah pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, entitled United States of America v. Magnesium Corporation of America, et al., Case No. 2:01CV0040B (the "Lawsuit" or the "Complaint"). By this Lawsuit, the United States: (i) seeks civil penalties for MagCorp's violations of RCRA and certain state hazardous waste regulations; (ii) requests injunctive relief required to bring MagCorp into compliance with RCRA and all other applicable state and federal environmental statutes and regulations; and (iii) seeks to establish, among other things, Metals' liability for the acts and omissions of MagCorp.

(b) The Complaint alleges that MagCorp violated various federal and state hazardous waste requirements under RCRA Subchapter III, 42 U.S.C. §§ 6921 et seq., as follows: First Claim for Relief -- Failure To Make Hazardous Waste Determinations As A Generator; Second Claim for Relief -- Violation of Standards Pertaining to Hazardous Waste Generators; Third Claim for Relief -- Violation of Standards Pertaining to Generators of Used Oil; Fourth Claim for Relief -- Illegal Treatment of Hazardous Waste; Fifth Claim for Relief -- Illegal Disposal of Hazardous Waste; Sixth Claim for Relief -- Failure to Comply with Standards for Treatment, Storage and Disposal of Hazardous Waste in Surface Impoundments; Seventh Claim for Relief -- Failure to Close Surface Impoundments; Eighth Claim for Relief -- Failure to Comply with Standards for Treatment, Storage and Disposal of Hazardous Waste in

Landfills; Ninth Claim for Relief -- Illegal Landfill Disposal; Tenth Claim for Relief -- Violation of Groundwater Monitoring Requirement Applicable to Owner/Operators; Eleventh Claim for Relief -- Violation of Requirement that Owner/Operators File Closure Plans; Twelfth Claim for Relief -- Violation of Requirement that Owner/Operators Provide Financial Assurances; Thirteenth Claim for Relief -- Violation of Requirement that Owner/Operators Minimize Releases; Fourteenth Claim for Relief -- Violation of Requirement that Owner/Operators Maintain Operating Records; Fifteenth Claim for Relief -- Violation of Requirement that Owner/Operators Analyze Hazardous Wastes; and Sixteenth Claim for Relief -- Failure to Comply with General Facility Standards Applicable to Owners/Operators.

(c) The Complaint alleges that MagCorp is a closely held corporation owned wholly by Metals and controlled by Metals and the owners of Metals. Because of significant transfers of assets to Metals and the owners of Metals, MagCorp is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. Metals is liable for MagCorp's violations of RCRA and any other acts and omissions of MagCorp alleged in the Complaint.

(d) The Complaint requests a civil penalty for violations of federal and state hazardous waste regulations commencing five years preceding its January 16, 2001 filing and continuing in an amount not to exceed Twenty Five Thousand Dollars (\$25,000) for each day of each violation before January 30, 1997 and not to exceed Twenty Seven Thousand and Five Hundred Dollars (\$27,500) for each day of each violation after January 30, 1997, or such other amount as determined by the Court. Debtors are liable to the United States for this amount.

(e) The Complaint requests injunctive relief requiring MagCorp to (i) comply with RCRA and all applicable environmental laws, (ii) submit a plan with enforceable schedules to segregate non-hazardous wastes from hazardous wastes and manage them separately; (iii) properly manage, treat, store, dispose, or recycle hazardous wastes; (iv) characterize the nature and extent of releases; and (v) perform site-wide corrective action for all solid waste management units. Debtors are liable to the United States for performing all injunctive relief.

7. The United States hereby requests payment of all penalties described in paragraph 6 accruing post-petition as an administrative expense. See Cumberland Farms, Inc. v. Florida Dep't of Env'tl. Prot., 116 F.3d 16, 20-21 (1st Cir. 1997) ("The payment of a fine for failing, during bankruptcy, to meet the requirements of [the] environmental protection laws is a cost 'ordinarily incident to operation of a business' in light of today's extensive environmental regulations." (quoting Reading Co. v. Brown, 391 U.S. 471, 483 (1968))); United States v. Chateaugay Corp. (In re Chateaugay Corp.), 112 B.R. 513, 525-26 (S.D.N.Y. 1990), aff'd, 944 F.2d 997 (2d Cir. 1991). The United States further asserts on a protective basis that the cost of Debtors' compliance with its liabilities for injunctive relief is an administrative expense of the estate as set forth in paragraphs 20 and 21 below.

C. Basis of EPA's Claim Under AOC Docket No. RCRA-8-2000-16

8. EPA and MagCorp entered into the AOC, Docket No. RCRA-8-2000-16, under Section 7003 of RCRA, 42 U.S.C. §§ 6901 et seq., effective June 22, 2001.

9. The AOC stated in its "Findings of Fact" that workers could be exposed to high concentrations of dioxins and/or HCB in or near ditches and ponds at the Facility, in

particular, the "western" ditch and spoils near the western ditch, through ingestion, dermal, or respiratory exposure.

10. The AOC stated in its "Findings of Fact" that dioxins and HCB could cause adverse health effects in humans.

11. The AOC stated in its "Conclusions of Law" that the past or present handling of solid waste at the facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.

12. The AOC required MagCorp *inter alia* to (i) conduct testing for dioxins, furans and HCB at portions of the Facility; (ii) perform a risk assessment of worker exposure to these substances; (iii) perform remediation as indicated by the risk assessment; (iv) investigate potential sources of dioxin, furan and HCB formation in its manufacturing process; (v) comply with certain reporting requirements; and (vi) submit a work plan to implement these tasks.

13. The United States hereby asserts, on a protective basis as described in paragraphs 20 and 21 below, that the cost of Debtors' compliance with its liabilities for all actions required under the AOC as summarized in paragraph 12 is an administrative expense of the estate.

D. Basis of EPA's Claim Under AO Docket No. RCRA-8-2001-05

14. The EPA issued the AO, Docket No. RCRA-8-2001-05, under Section 7003 of RCRA, 42 U.S.C. §§ 6901 et seq., on June 15, 2001.

15. The AO stated in its "Findings of Fact" that workers could be exposed to high concentrations of chlorine gas, HCB, dioxins, furans, PCBs, arsenic, and chromium at various

points around the Facility, and in particular to HCB, dioxins, furans, PCBs, arsenic, and chromium in anode dust at the Facility.

16. The AO stated in its "Findings of Fact" that workers may suffer adverse health effects from exposure to chlorine gas, HCB, dioxins, furans, PCBs, arsenic, and chromium at various locations at the Facility and, in particular, that workers who handle anode dust at the Facility may suffer serious adverse health effects.

17. The AO stated in its "Conclusions of Law" that the past or present handling of solid waste at the Facility, including anode dust, may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

18. The AO required MagCorp inter alia to (i) stop release of anode dust from the "anode dust headers"; (ii) investigate soils in the vicinity of the anode dust header area and remediate the area if necessary; and (iii) evaluate and recommend to EPA methods to eliminate formation and/or releases of dioxins, furans, hexachlorobenzene and other chemicals at the Facility.

19. The United States hereby asserts, on a protective basis as described in paragraphs 20 and 21 below, that the cost of Debtors' compliance with its liabilities for all actions required under the AOC as summarized in paragraph 18 is an administrative expense of the estate.

E. Miscellaneous Provisions

20. Certain statutory and regulatory obligations of Debtors under RCRA, including MagCorp's obligations under the AOC and the AO issued pursuant to Section 7003 of

RCRA, 42 U.S.C. § 6973, and Debtors' obligations to perform injunctive actions requested in the Complaint, are mandatory injunctive obligations that are not dischargeable under the Bankruptcy Code. The Debtors, including any successor to MagCorp or Metals, must comply with such mandatory injunctive obligations.

21. In the alternative, the United States asserts on a protective basis that the cost of Debtors' compliance with their liabilities for injunctive relief as set forth above is an administrative expense of the estate. See United States v. LTV Corp. (In re Chateaugay Corp.), 944 F.2d 997, 1009-10 (2d Cir. 1991) ("[R]esponse costs for post-petition remedial action qualify as administrative expenses."). This Request is filed in protective fashion to protect the United States' rights with respect to mandatory injunctive obligations of the Debtors, and the United States reserves the right to take future actions to enforce any such obligations. Nothing in this Request constitutes an election of remedies or a waiver of any rights of the United States.

22. This Request reflects the known liability of the Debtors to the United States on behalf of the EPA. The United States reserves the right to amend this Request to assert subsequently discovered liabilities. This Request is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the Debtors by this or any other federal agency.

Dated: February 18, 2003
New York, NY

Respectfully submitted,

JAMES B. COMEY
United States Attorney for the
Southern District of New York

By:



EDWARD CHANG (EC-8218)
Assistant United States Attorney
33 Whitehall Street -- 8th floor
New York, New York 10004
Tel. (718) 422-5628

Exhibit C

FORM B10 (Official Form 10) (4/01)

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		PROOF OF CLAIM
Name of Debtor <u>Magnesium Corp. of America</u>		Case Number <u>01-14312 (REG)</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>Bureau of Land Management, Department of the Interior</u>		FILE COPY
Name and address where notices should be sent: <u>Office of Field Solicitor</u> <u>125 S. State St., suite 6201</u> <u>Salt Lake City, UT 84138</u>		
Telephone number: <u>(801) 524-5677</u>		
Account or other number by which creditor identifies debtor: <u>UTU-54897 (UT-023)</u>		Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court. <input type="checkbox"/>
Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends		
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>see attached</u>		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ <div style="text-align: center;">(date) (date)</div>		
2. Date debt was incurred: <u>8/1993 - present</u>		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ <u>6,120,609.96</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date <u>2/19/02</u>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>Glenn A. Carpenter</u> <u>Glenn A. Carpenter</u> Salt Lake Field Office Manager	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

JAMES B. COMEY
 United States Attorney for the
 Southern District of New York
 Attorney for United States of America
 By: Edward Chang (EC-8218)
 Assistant United States Attorney
 100 Church Street, 19th Floor
 New York, NY 10007
 Telephone: (718) 422-5628

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----	x	Chapter 11
In re	:	
	:	
MAGNESIUM CORPORATION	:	Case No. 01-14312 (REG)
OF AMERICA,	:	
	:	
Debtor.	:	
-----	x	(Jointly Administered)
In re	:	
	:	
RENCO METALS, INC.,	:	Case No. 01-41311 (REG)
	:	
Debtor.	:	
-----	x	

**PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF
 THE UNITED STATES BUREAU OF LAND MANAGEMENT**

A. Preliminary Statement

1. This Proof of Claim is filed by the United States at the request of the United States Bureau of Land Management ("BLM"). The Attorney General is authorized to make this Proof of Claim on behalf of the United States. This Proof of Claim relates to:

(a) the liability of debtor Magnesium Corporation of America ("MagCorp") and debtor Renco Metals, Inc. ("Metals"; collectively, "Debtors") for a reclamation bond required to be paid pursuant to a right-of-way grant, serial number U-54897, and

(b) the liability of the Debtors for unpaid rent on ROW U-54897.

B. Facts

2. In 1986, Amax Magnesium, Inc. ("Amax"), a predecessor in interest to MagCorp, received from BLM a right-of-way grant ("ROW"), serial number U-54897, to construct a canal and evaporative ponds ("Knolls Facility") on property owned by the United States and managed by the BLM. Attached as exhibit A is a copy of relevant provisions of ROW U-54897.

3. ROW U-54897 requires MagCorp to pay rent in advance on an annual basis. By letter dated January 29, 2002, MagCorp was informed that rent was past due for calendar year 2002 in the amount of \$68,969.96. That amount remains due and owing. Attached as exhibit B is the letter, dated January 29, 2002, demanding payment from MagCorp.

4. ROW U-54897 further provides: "Prior to abandonment of the grant, the holder shall contact the Authorized Officer to arrange a joint inspection of the grant area. The inspection will be held to agree on an acceptable abandonment and rehabilitation plan. The Authorized Officer must approve the plan in writing prior to the holder commencing any abandonment and rehabilitation activities."

5. The Knolls Facility has not been used for any production purposes since December, 1999.

6. MagCorp is a closely held corporation owned wholly by Metals and controlled by Metals and the owners of Metals. Because of significant transfers of assets to Metals and the owners of Metals, MagCorp is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. Metals is liable for MagCorp's debts to the United States.

C. Claim for Unpaid Rent

6. The United States hereby asserts an administrative priority claim against the Debtors for unpaid rent as described in paragraph 3.

D. Claims for Reclamation Expenses

7. The Salt Lake Field Office of the BLM has determined that the reclamation requirements for ROW U-54897 include, without limitation, reclamation relating to ditches and berms developed during ditch construction, exterior dikes of the evaporation ponds, interior dikes of the evaporation ponds, brine storage ponds, removal of structural facilities, roads, and reestablishment of cadastral survey monuments. BLM's cost estimate for the reclamation is \$6,051,640.

8. The United States hereby asserts a general unsecured claim against the Debtors for reclamation expenses as described in paragraph 7.

E. Conclusion

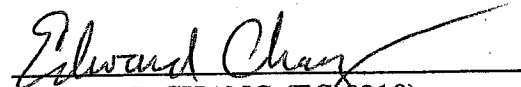
9. This Proof of Claim reflects the known liability of the Debtors to the United States on behalf of the BLM. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the Debtor by this or any other federal agency.

10. The United States is entitled to administrative priority for any post-petition liabilities of the Debtors. This Proof of Claim is filed only in protective fashion with respect to such post-petition liabilities and is not a waiver of the United States' right to administrative priority status. The United States will file any application for administrative expense priority at the appropriate time.

Dated: February 28, 2002
New York, NY

JAMES B. COMEY
United States Attorney for the
Southern District of New York

By:


EDWARD CHANG (EC-8218)
Assistant United States Attorney
100 Church Street, 19th floor
New York, New York 10007
Tel. (718) 422-5628

Dated: February 14, 2002
Salt Lake City, UT



GLENN A. CARPENTER
Bureau of Land Management
Salt Lake Field Office
2370 South 2300 West
Salt Lake City, UT 84119

EXHIBIT A

U-54897
2800
(UT-027)

AMENDED RIGHT-OF-WAY

SECTION A

1. There is hereby granted, pursuant to Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761), a nonexclusive, non-possessory right-of-way grant to:

MAGCORP
Magnesium Corporation of America
238 North 2200 West
Salt Lake City, Utah 84116

In case of change of address, the holder shall immediately notify the Authorized Officer.

2. To use, subject to terms and conditions set out below, the following described public land:

Evaporative Pond portion: subtotal 53,212 acres

T. 1 N., R. 12 W., SLM, UT:

Sections 4 - 7, All

Section 8, N 1/2, SW 1/4

Section 9, N 1/2

Section 17, W 1/2

Sections 18 & 19, All

Section 20, NW 1/4, S 1/2

Section 21, S 1/2

Sections 28 - 31, All

Section 33, All

Excluding private lands in Sections 28 & 33

T. 1 S., R. 12 W., SLM, UT:

Sections 4 - 9, All

Sections 17, 18, those portions north of I-80

T. 1 N., R. 13 W., SLM, UT:

Sections 1, 3 - 15, 17 - 31, 33 - 35, All

T. 1 S., R. 13 W., SLM, UT:

Sections 1, 3 - 12, All

Sections 13 - 15, 17, 18, those portions north of I-80

T. 1 N., R. 14 W., SLM, UT:
Sections 1, 3, 4, 9 -15, 23 - 26, All

T. 1 S., R. 14 W., SLM, UT:
Section 1, All

Water Well subtotal .08 acres

A 60' X 60' site within the following legal subdivisions:

T. 1 S., R. 12 W., SLM, UT:
Section 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$

Haul Roads: subtotal 72.46 acres

Existing Road

T. 1 S., R. 12 W., SLM, UT:
Section 3, W $\frac{1}{2}$ W $\frac{1}{2}$
Section 4, SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 9, E $\frac{1}{2}$ E $\frac{1}{2}$
Section 10, NW $\frac{1}{4}$ NW $\frac{1}{4}$

T. 1 N., R. 12 W., SLM, UT:
Section 3, Lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$
Section 10, E $\frac{1}{2}$ W $\frac{1}{2}$
Section 15, E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 22, NW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 34, W $\frac{1}{2}$ SW $\frac{1}{4}$

Haul Road No. 2

T. 1 S., R. 12 W., SLM, UT:
Section 13, SE $\frac{1}{4}$ SE $\frac{1}{4}$

T. 1 S., R. 11 W., SLM, UT:
Section 18, W $\frac{1}{2}$ W $\frac{1}{2}$

Haul Road No. 3

T. 1 S., R. 12 W., SLM, UT:
Section 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$

Haul Road No. 4

T. 1 N., R. 12 W., SLM, UT:
Section 22, NW $\frac{1}{4}$ SW $\frac{1}{4}$

Haul Road No. 5

T. 1 N., R. 12 W., SLM, UT:
Section 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$

Haul Road No. 6

T. 1 S., R. 12 W., SLM, UT:
 Section 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 8, SE $\frac{1}{4}$
 Section 9, NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 17, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$

Brine Pipeline subtotal 155.83 acres

T. 1 S., R. 13 W., SLM, UT:
 Section 13, S $\frac{1}{2}$

T. 1 S., R. 12 W., SLM, UT:
 Section 13, S $\frac{1}{2}$
 Section 14, S $\frac{1}{2}$
 Section 15, S $\frac{1}{2}$
 Section 17, S $\frac{1}{2}$
 Section 18, S $\frac{1}{2}$

T. 1 S., R. 11 W., SLM, UT:
 Section 1, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 9, S $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 10, S $\frac{1}{2}$
 Section 11, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 12, N $\frac{1}{2}$ N $\frac{1}{2}$
 Section 17, N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 18, S $\frac{1}{2}$

T. 1 S., R. 10 W., SLM, UT:
 Section 5, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 6, Lots 6, 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$

T. 1 N., R. 10 W., SLM, UT:
 Section 13, S $\frac{1}{2}$
 Section 23, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 24, NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 26, NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 27, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
 Section 33, NE $\frac{1}{4}$
 Section 34, NW $\frac{1}{4}$

T. 1 N., R. 9 W., SLM, UT:
 Section 17, N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 18, Lots 2, 3, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$
 Section 21, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 22, S $\frac{1}{2}$
 Section 25, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 26, W $\frac{1}{2}$, SE $\frac{1}{4}$
 Section 27, SW $\frac{1}{4}$

T. 1 S., R. 8 W., SLM, UT:
 Section 5, Lots 2 - 4

T. 1 N., R. 8 W., SLM, UT:
 Section 3, Lot 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 10, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 15, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 22, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$
 Section 27, NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 28, E $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 30, SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 31, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, SE $\frac{1}{4}$
 Section 33, NW $\frac{1}{4}$ SW $\frac{1}{4}$

T. 2. N., R. 8 W., SLM, UT:
 Section 22, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 27, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 34, E $\frac{1}{2}$ W $\frac{1}{2}$

Temporary Water Pipeline No. 1 subtotal 6.66 acres

T. 1 S., R. 11 W., SLM, UT:
 Section 18, W $\frac{1}{2}$ W $\frac{1}{2}$

T. 1 S., R. 12 W., SLM, UT:
 Section 13, E $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 14, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 15, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 17, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$

Temporary Water Pipeline No. 2 subtotal 1.45 acres

T. 1 N., R. 12 W., SLM, UT:
 Section 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$

3. Description of the Right-of-Way Facility and Purpose:

The pond portion of the right-of-way is for the construction, operation, use, and maintenance of an evaporative pond system, totalling approximately 53,212 acres.

The road portion of the right-of-way is for the operation, use and maintenance of an existing road, 60 feet wide, and for the construction, operation, use and maintenance of new roads, 80 feet wide. The total acreage for these roads is approximately 58 acres.

The pipeline portion of the right-of-way is for the construction, operation, use and maintenance of a 41 mile pipeline system, 20 feet wide, with the construction of this pipeline, and is for a 50 foot construction width, totalling an additional 150 acres.

The amended brine pipeline portion of the right-of-way is for the construction, operation, use and maintenance of a relocated portion of a 41 mile pipeline system, 12,700 feet long, 20 foot wide, totalling 5.83 acres.

The water well right-of-way is for the construction, use and maintenance of a water well site 60 feet by 60 feet, involving .08 acres.

The temporary haul road is for the operation, use and maintenance of an existing road, approximately 10,500 feet in length, and 60 feet in width, totalling 14.46 acres.

The two temporary water pipelines are for the construction, operation, use and maintenance of two water pipelines associated with project construction. Temporary Water Pipeline No. 1 is approximately 29,000 in length, 10 feet in width, and totals 6.66 acres. Temporary Water Pipeline No. 2 is approximately 6300 feet in length, 10 feet in width, and totals 1.45 acres.

The total of this right-of-way is 53,448.48 acres.

TERMS AND CONDITIONS

SECTION B

1. The right-of-way holder agrees to comply with all the applicable regulations contained in 43 CFR 2800.

2. If the right-of-way holder violates any of the terms and conditions of the right-of-way, the Authorized Officer may, after giving written notice, declare the grant terminated.

3. This grant is subject to all valid rights existing on the effective date of this grant.

4. The right-of-way shall be relinquished to the United States if the authorized uses are no longer needed.

5. All other terms and conditions. Compliance will be in accordance with the terms and conditions as specified herein and in Exhibit A, attached hereto and made a part hereof.

6. Rental.

The holder will pay in advance an annual rental to the United States. The holder will make each subsequent annual rental payment before the next succeeding anniversary of the effective date.

a. The fair market rental for the 7,596.48 acres containing capital investments (see Exhibit B), the office, shop, main ponds, pipelines, roads, wells, and canals, shall be \$1.10 per acre. This rental rate shall be subject to periodic reappraisal, at five-year intervals beginning in June 1993, These reappraisals shall be based on fair market value.

b. BLM will establish a rental rate of 15% or \$0.165 per acre on those remaining public lands currently under the right-of-way containing other ponds and dikes (45,852 acres). The rental rate on these lands will remain at 15% of a base, but that base rate shall be subject to periodic reappraisal. Magcorp will not use these 45,852 acres as long as they are paying this 15% rate.

c. Should these or any or all of these 45,852 acres once again become part of the operation, this rental will immediately increase to the fair market rate at that time. Likewise, should any of the 7,596.48 acres become non-essential and not used for production, upon notification to and verification by BLM, the rate for those lands shall drop to the 15% rate, at the time of the next scheduled reappraisal.

d. BLM retains the right to issue a right-of-way grant, to a third party, on any portion of this 45,852 acres with concurrence by Magcorp. This will not affect the rental paid by Magcorp, unless Magcorp does not agree with the issuance of another right-of-way to a third party. In such a situation,

BLM will not issue the right-of-way in question, but Magcorp's rental on those lands (the acreage applied for by the other party) will immediately increase to the fair market rate at that time.

7. This right-of-way grant will terminate 30 years from the effective date, unless prior thereto it is relinquished, abandoned, terminated or otherwise modified pursuant to the terms and conditions of this grant or of any applicable Federal law or regulation.

This right-of-way grant may be renewed. If renewed, right-of-way will be subject to regulations existing at the time of renewal, and such other terms and conditions deemed necessary to protect the public interest.

SECTION C

The effective date of this right-of-way grant is the date of execution by the Authorized Officer.

The undersigned agrees to the terms and conditions of this right-of-way grant:

Magnesium Corporation of America
(Name of Corporation)

By: Lee R. Brown

Title: Vice President
(Affix Corporate Seal)

The right-of-way grant is executed this 9 day of August, 1993

Howard Hadick
Authorized Officer

Dany Express Area Manager
Title

EXHIBIT A
AMENDED RIGHT-OF-WAY U-54897
STIPULATIONS

1. There is reserved to the Authorized Officer, the right to grant additional rights-of-way or permits for compatible uses on, over, under or adjacent to the land involved in this grant.
2. The holder shall, to the fullest extent of the law, indemnify the United States against any liability, damage, or claims arising in connection with the holder's use or occupancy of public land under this grant.
3. The holder shall conduct all construction, operation and maintenance activities in a manner that will avoid or minimize degradation of air, land and water quality. All construction work and subsequent use of the right-of-way shall be consistent with applicable Federal, State and local laws and regulations relating to safety, water quality, and public health.
4. All construction activities shall be confined to the minimum area necessary and shall not exceed the established area of the right-of-way.
5. The holder shall do everything reasonable within its power and shall require its employees, contractors, and employees of contractors to do everything reasonable within their power, both independently and upon request of the Bureau, to prevent and suppress fires on or near the land to be occupied under this grant. When requested by the Authorized Officer, the holder shall make their equipment or the equipment of their contractors temporarily available for fighting fires caused by any activity associated with this grant.
6. During construction, the holder shall regulate access and vehicular traffic as required to protect the public, wildlife, and livestock from hazards associated with the project.
7. Since portions of this right-of-way will be co-used with rights-of-way U-47260 and U-54898, the holder shall provide evidence satisfactory to the Authorized Officer that road use agreements have been entered into with the holders of these rights-of-way.
8. Construction-related traffic shall be restricted to routes approved by the Authorized Officer. New access roads or cross-country vehicle travel will not be permitted unless prior written approval is given by the Authorized Officer. Authorized roads used by the holder shall be rehabilitated or maintained when construction activities are complete as approved by the Authorized Officer.

9. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the Authorized Officer. The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate action to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the Authorized Officer after consulting with the holder.

10. The holder shall promptly remove and dispose of all waste caused by its activities as directed by the Authorized Officer. The term "waste" as used herein means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, petroleum products, ashes and equipment. Toxic material shall not be released into any lake or water drainage. If facilities authorized for construction under this right-of-way grant use Polychlorinated Biphenyls (PCBs), such use shall be in a totally enclosed manner in accordance with provisions of the Toxic Substances Control Act of 1976, as amended (40 CFR Part 761). Additionally, any release of PCBs (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR Part 117 shall be reported as required by law. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any hazardous material shall be furnished to the Authorized Officer within 5 working days of the occurrence of the spill or release.

11. The holder will comply with all State, county, and local government laws and regulations which apply to this project.

12. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the Authorized Officer and the respective installing authority, if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands of the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the Authorized Officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

13. The holder shall not initiate any construction or other surface disturbing activities on the right-of-way without the prior written authorization of the Authorized Officer. Such authorization shall be a written notice to proceed issued by the Authorized Officer. Any notice to proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.

14. The holder shall submit plans of development that describe in detail the construction, operation, and maintenance of the right-of-way and its associated improvements or facilities. The degree and scope of these plans will vary depending upon (1) the complexity of that portion of the improvements or facilities, (2) the anticipated conflicts that require mitigation, and (3) additional technical information required by the Authorized Officer. The plans will be reviewed and, if appropriate, modified and approved by the Authorized Officer. An approved plan of development shall be made a part of the Notice to Proceed.

15. If determined to be necessary based upon the information submitted in any plan of development, the Authorized Officer may require a bond or other security to be furnished at a date that would be specified at the time the bond or security is required. The amount of the bond or security shall be determined by the Authorized Officer. This bond or security would be maintained in effect until construction has been completed and determined to be in compliance with the plan of development, as determined by the Authorized Officer.

16. Prior to beginning construction, the holder will furnish all contractors copies of these stipulations (Exhibits A and B, and any additional stipulations in the Notices to Proceed) and explain the limitations imposed by said stipulations.

17. Prior to abandonment of the grant, the holder shall contact the Authorized Officer to arrange a joint inspection of the grant area. The inspection will be held to agree on an acceptable abandonment and rehabilitation plan. The Authorized Officer must approve the plan in writing prior to the holder commencing any abandonment and rehabilitation activities.

18. The holder will comply with all State, county, and local government laws and regulations which apply to this project.

EXHIBIT B

Evaporative Pond portion: subtotal 7,360 acres

T. 1 S., R. 12 W., SLM, UT:
Sections 5 - 7, All
Section 8, NW 1/4

T. 1 S., R. 13 W., SLM, UT:
Sections 1, 6, 7, 11 -15, All
Section 18, NW 1/4

Water Well subtotal .08 acres

A 60' X 60' site within the following legal subdivisions:

T. 1 S., R. 12 W., SLM, UT:
Section 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$

Haul Roads: subtotal 72.46 acres

Existing Road

T. 1 S., R. 12 W., SLM, UT:
Section 3, W $\frac{1}{2}$ W $\frac{1}{2}$
Section 4, SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 9, E $\frac{1}{2}$ E $\frac{1}{2}$
Section 10, NW $\frac{1}{4}$ NW $\frac{1}{4}$

T. 1 N., R. 12 W., SLM, UT:
Section 3, Lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{2}$
Section 10, E $\frac{1}{2}$ W $\frac{1}{2}$
Section 15, E $\frac{1}{2}$ NW $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{2}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 22, NW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 34, W $\frac{1}{2}$ SW $\frac{1}{2}$

Haul Road No. 2

T. 1 S., R. 12 W., SLM, UT:
Section 13, SE $\frac{1}{4}$ SE $\frac{1}{4}$

T. 1 S., R. 11 W., SLM, UT:
Section 18, W $\frac{1}{2}$ W $\frac{1}{2}$

Haul Road No. 3

T. 1 S., R. 12 W., SLM, UT:
Section 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$

Haul Road No. 4

T. 1 N., R. 12 W., SLM, UT:
Section 22, NW $\frac{1}{4}$ SW $\frac{1}{4}$

Haul Road No. 5

T. 1 N., R. 12 W., SLM, UT:
 Section 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$

Haul Road No. 6

T. 1 S., R. 12 W., SLM, UT:
 Section 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 8, SE $\frac{1}{4}$
 Section 9, NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 17, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$

Brine Pipeline subtotal 155.83 acres

T. 1 S., R. 13 W., SLM, UT:
 Section 13, S $\frac{1}{2}$

T. 1 S., R. 12 W., SLM, UT:
 Section 13, S $\frac{1}{2}$
 Section 14, S $\frac{1}{2}$
 Section 15, S $\frac{1}{2}$
 Section 17, S $\frac{1}{2}$
 Section 18, S $\frac{1}{2}$

T. 1 S., R. 11 W., SLM, UT:
 Section 1, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 9, S $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 10, S $\frac{1}{2}$
 Section 11, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 12, N $\frac{1}{2}$ N $\frac{1}{2}$
 Section 17, N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 18, S $\frac{1}{2}$

T. 1 S., R. 10 W., SLM, UT:
 Section 5, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 6, Lots 6, 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$

T. 1 N., R. 10 W., SLM, UT:
 Section 13, S $\frac{1}{2}$
 Section 23, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 24, NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 26, NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 27, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
 Section 33, NE $\frac{1}{4}$
 Section 34, NW $\frac{1}{4}$

T. 1 N., R. 9 W., SLM, UT:

Section 17, N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$
Section 18, Lots 2, 3, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$
Section 21, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$
Section 22, S $\frac{1}{2}$
Section 25, S $\frac{1}{2}$ S $\frac{1}{2}$
Section 26, W $\frac{1}{2}$, SE $\frac{1}{4}$
Section 27, SW $\frac{1}{4}$

T. 1 S., R. 8 W., SLM, UT:

Section 5, Lots 2 - 4

T. 1 N., R. 8 W., SLM, UT:

Section 3, Lot 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$
Section 10, E $\frac{1}{2}$ W $\frac{1}{2}$
Section 15, E $\frac{1}{2}$ W $\frac{1}{2}$
Section 22, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$
Section 27, NW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 28, E $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 30, SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 31, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, SE $\frac{1}{4}$
Section 33, NW $\frac{1}{4}$ SW $\frac{1}{4}$

T. 2. N., R. 8 W., SLM, UT:

Section 22, E $\frac{1}{2}$ W $\frac{1}{2}$
Section 27, E $\frac{1}{2}$ W $\frac{1}{2}$
Section 34, E $\frac{1}{2}$ W $\frac{1}{2}$

Temporary Water Pipeline No. 1 subtotal 6.66 acres

T. 1 S., R. 11 W., SLM, UT:

Section 18, W $\frac{1}{2}$ W $\frac{1}{2}$

T. 1 S., R. 12 W., SLM, UT:

Section 13, E $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$
Section 14, S $\frac{1}{2}$ S $\frac{1}{2}$
Section 15, S $\frac{1}{2}$ S $\frac{1}{2}$
Section 17, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$

Temporary Water Pipeline No. 2 subtotal 1.45 acres

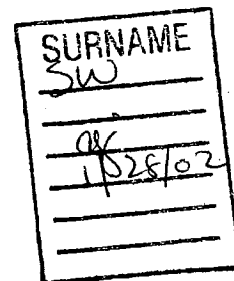
T. 1 N., R. 12 W., SLM, UT:

Section 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$

3. Description of the Right-of-Way Facility and Purpose:

The total of the area of capital investments is 7,596.48 acres.

EXHIBIT B



2800
UTU-54897
(UT-023)

File

Certified Mail # 7001 1140 0001 2632 0817
Return Receipt Requested

JAN 29 2002

Magnesium Corp of America
238 North 2200 West
Salt Lake City, Utah 84116

Re: Unpaid Right-of-Way Rental Fees for UTU-54897

Dear Right-of-Way Holder:

Our records indicate the calendar year 2002 rental for the above referenced right-of-way has not yet been paid. Per 43 CFR 2803.1-2(a), the holder of a right-of-way grant shall pay annually, in advance, the fair market rental value as determined by the authorized officer.

Please refer to the enclosed bill. Payment was due on January 1, 2002 and is now delinquent. Please remit the amount due within 15 days of receipt of this letter. Failure to do so may result in termination of the right-of-way.

Questions concerning this letter may be directed to Anita Jones at 801-977-4327 or Grace Jensen at 801-977-4372. We thank you for your help resolving this issue.

Sincerely,

Brad Palmer

Brad D. Palmer
Assistant Field Manager
Non-Renewable Resources

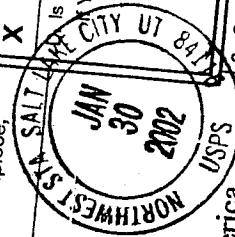
Enclosure
Bill

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Magnesium Corp of America
238 North 2200 West
Salt Lake City, Utah 84116

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) C. BAUER B. Date of Delivery 01-30-02

C. Signature X C. BAUER ☒ Agent ☐ Addressee

Is delivery address different from item 1? ☐ Yes ☒ No
YES, enter delivery address below:

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from Service label)

7001 1140 0001 2632 0817

PS Form 3811, March 2001

Domestic Return Receipt

MAGNESIUM CORP OF AMERICA
 SALT LAKE CITY UT BRANCH 02
 238 N 2200 W
 SALT LAKE CITY UT 84116

 If the above Name or Address are incorrect, please enter corrections.

If the rental is not paid when due, after notice,
 action will be taken to terminate the authorization.

BLM Tax Number: 84-0437540

BILLING NOTICE
 RETURN THIS NOTICE WITH REMITTANCE PAYABLE TO:

DEPARTMENT OF THE INTERIOR-BLM
 Salt Lake Field Office
 2370 South 2300 West

Salt Lake City UT 84119

PAY THIS AMOUNT: \$***68,969.96

BILLING SUMMARY

Due Date: 01/01/2002

SERIAL-NUMBER/ REFERENCE-NUMBER	BILLING PERIOD/ FUND SYMBOL	FUND CODE	COMM CODE	LAND TYPE	GEO ST	GEO CNTY	BILL AMOUNT
UTU 054897	From: 01/01/2002 14 3220	680	18		49	045	To: 01/01/2003 68969.96

TOTAL BILL AMOUNT: \$***68,969.96

TOTAL PAYMENTS RECEIVED: \$*****0.00

Balance: \$***68,969.96

Exhibit D

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		PROOF OF CLAIM
Name of Debtor <u>Magnesium Corporation of America</u>		Case Number <u>01-14312 (Reg)</u> <u>United States Bankruptcy Court, SD NY</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>Department of the Interior</u>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input checked="" type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and address where notices should be sent: <u>Office of the solicitor</u> <u>mail stop 6352</u> <u>1849 C street, N.W.</u> <u>Washington, D.C. 20240</u> Telephone number: <u>(202) 208-4423</u>		THIS SPACE IS FOR COURT USE ONLY
Account or other number by which creditor identifies debtor: <u>Civil Case No. 2:98CV00281 C (D. Utah)</u>		Check here <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>(see attached)</u> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
2. Date debt was incurred: <u>pre 1993 through Present</u> If court judgment, date obtained: _____		
4. Total Amount of Claim at Time Case Filed: \$ <u>See Attached (unliquidated)</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in, secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY FILED FEB 20 P 3:38 S.D.N.Y. BANKRUPTCY COURT
Date <u>2/14/02</u>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>Glenn A. Carpenter</u> <u>Glenn A. Carpenter</u> <u>Field Manager</u> <u>Salt Lake Field Office</u>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

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 Southern District of New York
 Attorney for United States of America
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**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----	x	Chapter 11
In re	:	
	:	
MAGNESIUM CORPORATION	:	Case No. 01-14312 (REG)
OF AMERICA,	:	
	:	
Debtor.	:	
-----	x	(Jointly Administered)
In re	:	
	:	
RENCO METALS, INC.,	:	Case No. 01-41311 (REG)
	:	
Debtor.	:	
-----	x	

**PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF
 THE UNITED STATES DEPARTMENT OF THE INTERIOR**

A. Preliminary Statement

1. This Proof of Claim is filed by the United States at the request of the United States Department of the Interior ("DOI"). The Attorney General is authorized to make this Proof of Claim on behalf of the United States. This Proof of Claim relates to:

(a) the liability of debtor Magnesium Corporation of America ("MagCorp") and debtor Renco Metals, Inc. ("Metals"; collectively, "Debtors") in conjunction with United States of America v. Magnesium Corporation of America, et al., Civil Case No. 2:98CV00281C (D.

Utah) ("Lawsuit") alleging trespass and conversion, unjust enrichment, and a claim under the False Claims Act ("FCA"), 31 U.S.C. §§ 3729 et seq., for violations committed by MagCorp; and

(b) claims asserted in the Lawsuit against the Debtors and others, including the Renco Group, Inc. ("Group"), Mr. Ira Leon Rennert ("Rennert"), the Trusts established by Rennert ("Rennert Trusts"), unidentified trustees and beneficiaries of the Rennert Trusts, Mr. Justin W. D'Atri ("D'Atri"), and KemMag, LLC ("KemMag") under the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 et seq. ("FDCPA") and the Federal Debt Priority Act, 31 U.S.C. § 3713 ("FDPA").

B. Facts

2. In 1986, the State of Utah ("State") received a right-of-way grant ("ROW") from the Bureau of Land Management ("BLM"), serial number U-54155, to pump water from the Great Salt Lake onto federal lands in the West Desert. The purpose of the project ("the West Desert Project") was to manage record high water levels in the Great Salt Lake and the resulting flooding.

3. ROW U-54155 permitted the State to construct, operate, maintain, and terminate the West Desert Project. The project consisted of a pumping plant and canals to transport the water, or brine, from the Great Salt Lake to the West Desert, where the water formed a broad, shallow pond in a natural basin that increased the evaporation of the water. This pond was located primarily on federal lands.

4. ROW U-54155 conveyed no interest to the State in minerals in, on or under the federal lands in the right-of-way.

5. MagCorp, through its predecessors, obtained a mineral lease (ML 18799) from the State in 1969 that permitted the extraction of magnesium chloride and other salts in the waters of the Great Salt Lake and the removal of salts from the surface of State lands covered by the lease, subject to the payment of royalties to the State. ML 18799 conveyed no interest to MagCorp in minerals in, on or under federal lands.

6. Prior to 1986, Amax Magnesium, Inc. ("Amax"), a predecessor in interest to MagCorp, had been using a facility in the Stansbury Basin, adjacent to the Great Salt Lake, for evaporation ponds to extract magnesium chloride and other minerals from the water in the Great Salt Lake. That facility was flooded by the rising lake levels in 1986.

7. On or about June 3, 1987, Amax received from BLM a right-of-way grant, serial number U-54897, to construct a canal and evaporative ponds ("Knolls Facility") on property owned by the United States and managed by the BLM.

8. Beginning in January 1988, MagCorp or its predecessors operated the Knolls Facility for the extraction of magnesium chloride and other minerals from the water pumped by the State from the Great Salt Lake to the West Desert pursuant to ROW U-54897.

9. On September 10, 1992, MagCorp announced its intent to relinquish most of the lands in ROW U-54897 by November, 1992, "... due to the lack of brine in the area."

10. Since at least January 1993, MagCorp has been harvesting minerals from waters underlying the federal lands or minerals contained in surface water derived from the groundwater on or underlying the federal lands.

11. The minerals contained in the groundwater located within the federal lands described in ROW U-54155, and all minerals contained in surface water derived from the groundwater on

or underlying the federal lands that MagCorp has been harvesting at its Knolls Facility, are minerals owned by the United States. MagCorp cannot extract them without a mineral lease from the United States under the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 et seq.

12. MagCorp has never held a mineral lease from the BLM allowing it to harvest or mine minerals in, on, or underlying federal lands in the West Desert.

13. Thus, since at least January 1993, if not before, MagCorp has been taking minerals belonging to the United States without a mineral lease.

14. On or about March 5, 1998, the BLM requested that MagCorp show cause why ROW U-54897 from the BLM should not be terminated for use of federal lands for a purpose not authorized under the regulations of 43 C.F.R. § 2800 et seq.

15. MagCorp responded by letters dated March 19, 1998 and March 30, 1998, and it made certain representations at a meeting held by the BLM with MagCorp on March 30, 1998.

16. In particular, MagCorp affirmatively represented that “allegations that [MagCorp] is operating the Knolls Solar Pond facility on naturally occurring shallow ground water intercepted by the inlet canal is absolutely false.” Letter dated March 19, 1998.

17. MagCorp affirmatively represented that “the perception that [MagCorp] is utilizing subsurface underground brines via our 6 mile inlet canal, is absolutely erroneous.” Letter dated March 30, 1998.

18. MagCorp affirmatively represented, at the meeting on March 30, 1998, that it was not mining minerals owned by the federal government through the production and use of groundwater.

19. However, the primary, if not sole, source of the minerals harvested at the Knolls Facility by MagCorp since at least January 1993 is groundwater containing minerals belonging to the United States.

20. As a result, MagCorp is liable to the United States for making false statements in order to conceal, avoid or decrease an obligation to pay money to the United States, in violation of the FCA; for trespass and conversion; and for unjust enrichment.

21. Metals is liable to the United States for the liabilities incurred by MagCorp. MagCorp is a wholly owned subsidiary of Metals. By means of fraudulent conveyances to Metals and owners of Metals, MagCorp is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States.

C. Procedural History of the Utah Lawsuit

22. The United States filed its initial complaint in the Lawsuit on April 21, 1998, its first amended complaint on August 1, 1999, and its second amended complaint ("Complaint") on January 16, 2001. A copy of the Complaint is attached as exhibit A.

23. The United States District Court for the District of Utah ("District Court") dismissed the Complaint on July 12, 2001, for failure to join the State as a necessary party.

24. The United States filed a motion for reconsideration on or about August 1, 2001.

25. MagCorp filed for bankruptcy on August 2, 2001.

26. MagCorp filed a notice with the District Court on August 8, 2001, stating that MagCorp and Metals had filed for bankruptcy in the Southern District of New York and that the Lawsuit was automatically stayed.

27. On or about August 20, 2001, MagCorp made an ex parte motion to the District Court requesting an open-ended continuance of the deadline to file a memorandum opposing the United States' motion for reconsideration, representing to the District Court that "the Bankruptcy Court has entered an order expressly enforcing the automatic stay provisions of 11 U.S.C. § 362."

28. The District Court issued an order, dated August 22, 2001, stating that "because this matter has been automatically stayed due to a bankruptcy proceeding, the court is without authority to rule on this motion and therefore does not do so."

29. On November 21, 2001, the United States filed a motion in District Court for a determination that the "police or regulatory power" exception to the automatic stay, see 11 U.S.C. § 362(b)(4), applies and for an order directing MagCorp to respond to the United States' motion for reconsideration. The motion is still pending.

D. Claim for Violation of the False Claims Act

30. MagCorp knowingly made false statements in order to avoid payment to the United States of the value of minerals taken from the United States. In the Lawsuit, the United States seeks treble damages for violations of the False Claims Act from January 1993 until the present, in an amount equal to three times the value of the federal minerals wrongfully taken from the United States.

E. Claims for Trespass, Conversion and Unjust Enrichment

31. Since at least January 1993, MagCorp knowingly and willfully removed minerals belonging to the United States without a valid mineral lease. In the Lawsuit, as provided for under Utah law, the United States seeks to recover treble the value of the minerals that MagCorp

knowingly and willfully extracted from federal lands, without deduction for labor or expenses.

In the alternative, pursuant to BLM regulations addressing willful ore trespass, the United States seeks to recover the full value, plus interest, of the minerals that MagCorp knowingly and willingly extracted from federal lands, without deduction for labor or expenses.

32. Magcorp intended to convert, and did convert, minerals owned by the United States by mining the minerals owned by the United States. In the Lawsuit, the United States seeks to recover the full value, plus interest, of the converted property.

33. MagCorp has been unjustly enriched by the amount it has received in connection with minerals taken from the federal mineral estate. In the Lawsuit, the United States seeks to recover the amount, plus interest, that MagCorp has been unjustly enriched.

F. Claim Under the Federal Debt Collection Procedures Act

34. MagCorp owes a debt to the United States resulting from MagCorp's trespass and conversion of federal minerals, its unjust enrichment, and its knowing submission of false statements regarding its trespass and conversion of federal minerals.

35. MagCorp is a wholly-owned subsidiary of Metals. By means of fraudulent conveyances to Metals and other entities, MagCorp is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States.

36. MagCorp and Metals, among others, through theories of alter ego and piercing the corporate veil, are "debtors" of the United States within the meaning of the FDCPA.

37. Transactions referenced in the Complaint involving MagCorp and Metals were fraudulent with respect to a debt owed to the United States within the meaning of the FDCPA. In the Lawsuit, the United States seeks to have those transactions unwound and to have the assets

that were the subject of the transactions transferred to the United States. In the alternative, MagCorp and Metals, among others, are liable to the United States for the value of those assets.

G. Claims Under The Federal Debt Priority Act

38. Under the Federal Debt Priority Act, 31 U.S.C. § 3713, the United States is entitled to priority of payment with respect to the claims set forth in paragraphs 30-33 and 37, above.

39. MagCorp and Metals, among others, are representatives within the meaning of the Federal Debt Priority Act and are liable to the extent that they have paid any debt of the Debtors before paying the claims of the United States as set forth in paragraphs 30-33 and 37, above.

H. Conclusion

40. The United States hereby asserts a claim against the Debtors for all amounts owed or amounts that may be owed in connection with its claims in the Lawsuit, as set forth in paragraphs 30-33, 37, and 38-39, above.

41. This Proof of Claim reflects the known liability in this Lawsuit of the Debtors to the United States on behalf of the DOI. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the Debtor by this or any other federal agency.

42. The United States has not perfected any security interest on its claim against the Debtors.

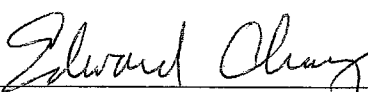
43. This Proof of Claim is filed as a general unsecured claim, except that the United States is entitled to administrative priority for any post-petition liabilities of the Debtors. This Proof of Claim is filed only in protective fashion with respect to such post-petition liabilities and

is not a waiver of the United States' right to administrative priority status. The United States will file any application for administrative expense priority at the appropriate time.

Dated: February 20, 2002
New York, NY

JAMES B. COMEY
United States Attorney for the
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By:


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Dated: February 19, 2002
Washington, D.C.

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Director
POLLY A. DAMMANN
Assistant Director

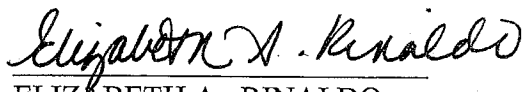

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EXHIBIT A

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

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Attorneys for United States

UNITED STATES DISTRICT COURT DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA)

Plaintiff,)

vs.)

MAGNESIUM CORPORATION OF)
AMERICA; RENCO METALS, INC.;)
RENCO GROUP, INC.; IRA L.)
RENNERT; RENNERT TRUSTS; JUSTIN)
W. D'ATRI AND UNIDENTIFIED)
TRUSTEES AND UNIDENTIFIED)
BENEFICIARIES OF THE RENNERT)
TRUSTS; and KEMMAG, LLC.)

Defendants.)

Civil No. 2:98CV00281C

SECOND AMENDED COMPLAINT

The United States of America, by its undersigned attorneys, brings this civil action against defendant Magnesium Corporation of America ("MagCorp"), Renco Metals Inc., ("Metals"), the Renco Group, Inc. ("Group"), Mr. Ira Leon Rennert ("Rennert"), the Trusts established by Rennert ("Rennert Trusts"), Justin W. D'Atri ("D'Atri") and unidentified trustees and unidentified beneficiaries of the Rennert Trusts; and KemMag, LLC ("KemMag") for trespass and conversion. Plaintiff also seeks to secure such relief under the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 - 3307; the Federal Priority Act ("FPA"), 31 U.S.C. § 3713; the False Claims Act, 31 U.S.C. §§3729-3733, and for unjust enrichment, as may be appropriate.

JURISDICTION AND VENUE

1. This action arises under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §1701-1784 (1976) ("FLPMA"), and its implementing regulations; the False Claims Act, 31 U.S.C. §§3729-3733; common law; the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001, et seq.; and the Federal Priority Act, 31 U.S.C. § 3713.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1345 and 1331.
3. Venue is proper in this district under 28 U.S.C. § 1391 and 31 U.S.C. § 3732.

PARTIES

4. The United States of America ("United States") brings this action on its own behalf and on behalf of the Bureau of Land Management ("BLM"), an agency within the United States Department of the Interior charged with the responsibility for administering federal lands.

5. Defendant MagCorp, whose business address is 238 N. 2200 West, Salt Lake City, Utah, is incorporated under the laws of the State of Delaware. Magcorp is in the business of processing brines from the Great Salt Lake to manufacture magnesium and magnesium alloys at its plant in Rowley, Utah.
6. Rennert, whose address is 625 Park Avenue, New York, NY 10021, is Chairman of the Board of Group, Metals and MagCorp. Rennert is the sole director of Metals and also is the Chief Executive Officer of Group and Metals.
7. Rennert established the Rennert Trusts for himself and members of his family. After a reasonable opportunity for further investigation or discovery, the evidence is likely to show that some of the Rennert Trusts are located in New York. Justin D'Atri is or was a Trustee of the Rennert Trusts; other unidentified persons are Trustees of the Rennert Trusts.
8. Rennert is a beneficiary of the Rennert Trusts. Other unidentified persons are additional beneficiaries of the Rennert Trusts.
9. The Rennert Trusts own 100% of Group. Group, whose business address is 30 Rockefeller Plaza, Suite 4225, New York, NY 10012, is incorporated under the laws of the State of New York as a subchapter S corporation whose profits and losses are attributed to its owners for income tax purposes. Group is also a holding company that owns, *inter alia*, 100% of Metals' stock. Group also owns numerous other concerns in the United States and abroad.
10. Metals, whose business address is 238 North 2200 West, c/o MagCorp, Salt Lake City, Utah 84116, is incorporated under the laws of the State of Delaware. Metals is a holding

company with no independent operations of its own. MagCorp had been owned by Group until 1993, when it became a wholly-owned subsidiary of Metals, as did another company, Sabel Industries, Inc. ("Sabel"). From the time of Metals' incorporation in 1993 to early December, 2000 Metals' income was generated by MagCorp and Sabel. Sabel was sold to K. Sabel Holdings, Inc. in December, 2000, for \$8 million cash. Prior to this sale, Sabel accounted for approximately 25% of Metals' income.

11. KemMag, whose business address is 238 N 2200 W, Salt Lake City, Utah, is incorporated under the laws of State of Utah. It is 50% owned by MagCorp, and 50% owned by another company, KemIron, Inc. MagCorp sells ferrous and ferric chloride, which it manufactures, to KemMag at cost. KemMag in turn sells this ferrous and ferric chloride commercially to the waste water treatment industry.

General Allegations

Trespass, Conversion and False Claims

12. In 1986, the State received a right-of-way grant from the BLM, serial number U-54155, to pump water from the Great Salt Lake onto federal lands in the West Desert. The purpose of the project ("West Desert Pumping Project" or "Project") was to manage record high water levels in the Great Salt Lake and the resulting flooding.
13. The right-of-way grant permitted the State to construct, operate, maintain, and terminate the West Desert Pumping Project. The Project consisted of a pumping plant and canals to transport the water from the Great Salt Lake to the West Desert, where the water formed a broad, shallow pond in a natural basin that increased the evaporation of the water. The pond was located primarily on federal lands.

14. Right-of-way grant U-54155 conveyed no interest to the State in minerals in, on or under the federal lands in the right-of-way.
15. MagCorp, through its predecessors, obtained a mineral lease (ML 18799) from the State in 1969 that allows for the extraction of magnesium chloride and other salts in the waters of the Great Salt Lake and for the removal of salts from the surface of State lands covered by the lease, subject to the payment of royalties. ML 18799 conveyed no interest to MagCorp in minerals in, on or under federal lands.
16. Prior to 1986, Amax Magnesium, Inc. ("Amax"), a predecessor in interest to MagCorp, had been using a facility in the Stansbury Basin, adjacent to the Great Salt Lake, for evaporation ponds to extract magnesium chloride and other minerals from the water, or brine, in the Great Salt Lake. That facility was flooded by the rising lake levels in 1986.
17. On or about June 3, 1987, Amax sought from BLM and was granted a right-of-way, serial number U-54897("ROW"), to construct a canal and evaporative ponds (the "Knolls Facility") on property owned by the United States and managed by the BLM. That ROW was issued pursuant to 43 C.F.R §§ 2800-2808 (1980) that implement the right-of-way provisions of the FLPMA.
18. Right-of-way grant U-54897 issued to MagCorp's predecessor conveyed no interest in minerals in, on or under federal lands and does not authorize the harvesting or mining of minerals from federal lands by MagCorp.
19. Amax entered into a special-use lease agreement with the State, No. 711 (SULA No. 711), in 1987 that provided for the surface use of lands owned by the State within the Knolls Facility. SULA No. 711 conveyed no interest to Amax in minerals in, on or under

federal lands and does not authorize the harvesting or mining of minerals from federal lands by Amax or its successors in interest.

20. Beginning in January 1988, MagCorp or its predecessors have operated the Knolls Facility for the extraction of magnesium chloride and other minerals from the water pumped by the State from the Great Salt Lake to the West Desert. MagCorp has paid royalties to the State based, at least in part, on the production of magnesium at MagCorp's Rowley Facility, which utilized magnesium chloride brines produced at the Knolls Facility or, alternatively, on the sale of production from the Knolls Facility.
21. As a result of falling lake levels, pumping by the State from the Great Salt Lake to the West Desert ceased on or about June 30, 1989.
22. In an internal memorandum dated October 14, 1991, MagCorp concluded that, "there has been no brine available at Knolls in the west desert since August 15, 1989. * * * Today, at Knolls, we are finishing the brines harvested from 1988 through 1989. We are utilizing less than 3000 acres for this purpose."
23. MagCorp represented to the BLM on or about October 23, 1991, that "there are no brines located near [the ROW]. They were only present from approximately February 1988 through August 1989."
24. Satellite imagery confirms that the surface pond of Great Salt Lake brine left in the basin at the termination of pumping of the West Desert Pumping Project on June 30, 1989, had completely disappeared from the West Desert by August 7, 1991. Satellite imagery also confirms that all surface brines held by MagCorp in storage in its storage pond "0" were gone in the first half of 1991.

25. On September 10, 1992, MagCorp announced its intent to relinquish most of the lands in the right-of-way grant U-54897 by November, 1992, "... due to the lack of brine in the area." A satellite image showed no brine in storage in pond "0" on September 26, 1992.
26. By the end of 1992, except for a small quantity of brine pumped from the inlet canal into Pond "1" the only surface brines visible within the Knolls Facility were brines in the final stages of concentration in Pond "7D" and finished brine within the brine storage reservoirs ready for transport to the MagCorp plant at Rowley, Utah.
27. In October 1996 an employee of the BLM discovered that MagCorp was still harvesting minerals from brine at its Knolls Facility.
28. Following that discovery, BLM has learned that MagCorp continued to harvest minerals at its Knolls Facility after the West Desert pond no longer contained Great Salt Lake water. BLM observed brine from the shallow groundwater aquifer underlying federal lands seeping into MagCorp's six-mile long inlet canal and other canals in the evaporation ponds.
29. Since at least January 1993, MagCorp has been harvesting minerals from waters underlying the federal lands or minerals contained in surface water derived from the groundwater on or underlying the federal lands.
30. The minerals contained in the groundwater located within the federal lands described in the right-of-way grant U-54155, and all minerals contained in surface water derived from the groundwater on or underlying the federal lands that MagCorp has been harvesting at its Knolls Facility are minerals owned by the United States. MagCorp cannot extract them without a mineral lease from the United States under the Mineral Leasing Act of

1920, 30 U.S.C. §§ 181, *et seq.*

31. MagCorp has never held a mineral lease from the BLM allowing it to harvest or mine minerals in, on, or underlying federal lands in the West Desert.
32. Thus, since at least January 1993, if not before, MagCorp has been taking minerals belonging to the United States without a mineral lease.
33. On or about March 5, 1998, the BLM requested that MagCorp show cause why its ROW from the BLM should not be terminated for use of federal lands for a purpose not authorized under the regulations of 43 C.F.R. § 2800 *et seq.*
34. MagCorp responded by letters dated March 19, 1998 and March 30, 1998 and, as set forth below, made certain representations at a meeting held by the BLM with MagCorp on March 30, 1998 (collectively, the "False Statements").
35. MagCorp affirmatively represented that "allegations that [MagCorp] is operating the Knolls Solar Pond facility on naturally occurring shallow ground water intercepted by the inlet canal is (sic) absolutely false." Letter dated March 19, 1998.
36. MagCorp affirmatively represented that "the perception that [MagCorp] is utilizing subsurface underground brines via our 6 mile inlet canal, is absolutely erroneous." Letter dated March 30, 1998.
37. MagCorp affirmatively represented, at the meeting on March 30, 1998, through Lee R. Brown, Vice-President, that it was not mining minerals owned by the federal government through the production and use of groundwater.
38. However, the primary, if not sole source of the minerals harvested at the Knolls Facility by MagCorp since at least January 1993 is groundwater containing minerals belonging to

the United States.

39. MagCorp, in bad faith, knowingly and willfully, trespassed upon federal mineral property.

**Alter Ego, Piercing the Corporate Veil, and Illustrative Transactions
Fraudulent as to a Debt Owed to the United States.**

40. Rennert, individually or through the Rennert Trusts created by him, controls Group, Metals, and MagCorp.
41. MagCorp is a wholly owned subsidiary of Metals. Metals is a wholly owned subsidiary of Group, and Group is 100% owned by the Rennert Trusts.
42. MagCorp is a closely held corporation that is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. MagCorp's sales in 1999 were nearly \$150 million, but as of April, 2000 MagCorp had a negative equity of approximately \$14 million.
43. Metals is a closely held corporation that is undercapitalized. As of January 2001 Metals has a negative equity of approximately \$50 million, which is insufficient to satisfy its debts to the United States.
44. Group's sales in 1999 were approximately \$2.5 billion.
45. Due to its ownership of all the capital stock of Metals, Group directs and controls the management and policies of Metals, including mergers, sales of assets, debt transactions, designation of Metals' board of directors and officers, and other corporate activities which, but for the control of Group and therefore of Rennert and the Rennert Trusts, would be conducted by Metals. Metals has paid excessive dividends to Group, which

resulted in burdening MagCorp with excessive debt and contributing to its insolvency.

46. Metals' 1999 Annual Report to the Securities Exchange Commission ("SEC") states:

All of [Metals'] issued and outstanding capital stock is owned by The Renco Group, Inc. ("Group") which is owned by trusts established by Mr. Ira Leon Rennert, the Chairman and Chief Executive Officer of [Metals] and Group, for himself and members of his family. As a result of such ownership, Mr. Rennert controls [Metals] and its subsidiaries [then MagCorp and Sabel].

47. Rennert is the sole director of Metals, a holding company with no independent operations of its own. Rennert exercises significant control over Metals' officers by, *inter alia*, determining compensation for Metals' executive officers, which is fixed by negotiations between those officers and Rennert, with Rennert acting on behalf of Group.

48. As a result of transactions directed by Rennert, MagCorp is insolvent on a balance sheet basis and unable to pay its debts owed to the United States. Such transactions include, but are not limited to, significant indebtedness incurred in 1996, when it sold Senior Notes ("Notes") worth \$150 million, payable in 2003. To effectuate the sale, Metals pledged the net assets of MagCorp and Sabel as collateral, and committed significant cash flow from them to service the debt. Such guarantee obliged MagCorp and Sabel unconditionally and fully, jointly and severally, to pay semi-annual interest payments of more than \$8 million, and to redeem the Notes when they become due. Metals used the proceeds from the 1996 sale largely to (a) help pay an \$88.9 million dividend to Group, (b) retire Metals' preferred stock (which entailed paying Group \$8.5 million, as Group was the preferred stockholder), and (c) make certain compensation payments to officers of MagCorp. Sabel is no longer a subsidiary of Metals, and is no longer a guarantor of

the Notes. As of December, 2000, MagCorp is the sole guarantor of the Notes.

49. These 1996 and 2000 actions, along with other transactions resulting in the transfer of significant assets of MagCorp to Metals, Group, and the officers of MagCorp had the effect of substantially reducing the assets of MagCorp, leaving MagCorp undercapitalized or insolvent on a balance sheet basis.
50. The above-described incurrence of debt and simultaneous payment of dividends, as well as other transactions, constitute siphoning of MagCorp's and Metals' corporate funds by Group and Rennert and the Rennert Trusts.
51. Metals' June 25, 1996 Second Amended Registration Statement filed with the SEC provides:

Under federal or state fraudulent conveyance laws, the Senior Notes might, under certain circumstances, be subordinated to existing or future indebtedness of [Metals] or found not to be enforceable in accordance with their terms. Under these statutes, if a court were to find that (i) the Senior Notes were incurred or the guarantees (the "Guarantees") of the Guarantors [then MagCorp and Sabel] were entered into with the intent of hindering, delaying or defrauding creditors or that [Metals] received less than a reasonably equivalent value or fair consideration for the Senior Notes and (ii) [Metals] or the Guarantors were insolvent immediately prior to the time the Senior Notes were issued and the Guarantees were incurred, as the case may be, were engaged in a business or transaction for which the assets remaining with [Metals] or the Guarantors constituted unreasonably small capital, or intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they matured, such court could void [Metals'] and the Guarantors' obligations under the Senior Notes, or subordinate the Senior Notes and the Guarantees to all other indebtedness of [Metals] and the Guarantors, as the case may be....Nor can there be any assurance that a court would not determine, regardless of whether [Metals] or the Guarantors were insolvent on the date the Senior Notes were issued, that the payments constituted fraudulent transfers on another ground.

52. Some of Metals' annual reports to the SEC (10-KS) filed with regard to its 1996

incurrence of debt include explanations of and amendments to compensation agreements with certain of MagCorp's officers. The 10-KS stated that, in anticipation of its incurrence of the \$150 million indebtedness, which was projected to leave Metals with a negative equity of \$50 million, MagCorp would pay certain officers bonuses exceeding \$1 million each, consistent with its employee participation agreements. Payment of such agreements, in conjunction with incurring debt, furthered MagCorp's and Metals' insolvencies.

53. Rennert, the Rennert Trusts, Group and Metals have so dominated and controlled the activities and assets of MagCorp that they have failed to respect MagCorp's separate existence. Disregarding MagCorp's separate existence and making the corporation insolvent by transfer of its assets to (at least) Group and Metals perpetuates a fraud or visits an injustice or an inequity on the United States.
54. Rennert's dealings with the assets of MagCorp constitutes a pattern of activity engaged in by Rennert with other corporations controlled by him of transferring the assets of a corporation to make the debtor corporation insolvent and defraud its creditors, including the United States.
55. MagCorp has a 50% investment in KemMag, but derives no financial benefit from KemMag's operations because it sells ferric chloride to KemMag at cost. Some \$5 million of ferric chloride sold at cost by MagCorp was used by KemMag to generate approximately \$15 million in sales during the period 1997 through 1999. MagCorp's undercapitalization is attributable, in part, to lost profits because of MagCorp's financial support of KemMag.

Count One - False Claims Act Violations by Defendant MagCorp

56. The United States reasserts the previous allegations in paragraphs (paras.) 1 - 55.
57. In violation of 31 U.S.C. § 3729(a)(7), MagCorp knowingly made the False Statements to conceal, avoid, or decrease an obligation to pay or transmit money to the United States, in that MagCorp had actual knowledge that it was harvesting minerals belonging to the United States, (e.g., minerals located in groundwater underlying federal lands), or acted in deliberate ignorance of the truth that it was harvesting minerals belonging to the United States, or acted in reckless disregard of the truth that it was harvesting minerals belonging to the United States.
58. Under the False Claims Act, the United States is entitled to recover statutory damages and civil penalties.

Count Two -- Trespass

59. The United States reasserts the previous allegations in paras. 1 - 58.
60. Any minerals contained in the groundwater located within the lands described in the right-of-way grant No. U-54155, and all minerals contained in surface water derived from the groundwater on or underlying the federal lands, including all minerals from the Great Salt Lake brines introduced by the State into the West Desert through the West Desert Pumping Project which infiltrated the subsurface of the federal lands, and all minerals on the surface derived from groundwater on or underlying federal lands are the property of the United States. Any unauthorized removal of such minerals is an act of trespass under 43 C.F.R. 9239.0-7. Such removal may only be authorized by a valid mineral lease from the United States.

61. Since at least January 1993, MagCorp knowingly and willfully removed the minerals belonging to the United States without a valid mineral lease, and continues to do so.
62. BLM regulations provide that the measure of damages for innocent ore trespass is the full value of the minerals in place before severance and the measure of damages for willful trespass is the full value of the minerals at the time of the conversion without deduction for labor or expenses. 43 C.F.R. §§ 9239.5-1, 9239.5-3.
63. MagCorp's trespass has been knowing and willful.
64. The United States is entitled under Utah law to recover three times the value of minerals, without deduction for labor or expenses, that MagCorp knowingly and willfully extracted from the federal lands or sold thereafter.
65. In the alternative, the United States is entitled to recover the full value, plus interest, of the minerals in place that MagCorp has knowingly and willingly extracted from federal lands.
66. The United States is also entitled to a permanent injunction preventing this continuing trespass.

Count Three -- Conversion

67. The United States reasserts the previous allegations in paras. 1 - 66.
68. MagCorp intended to convert the minerals owned by the United States.
69. MagCorp converted the minerals owned by the United States by mining the minerals owned by the United States, as set forth above.
70. The United States is entitled to recover the full value, plus interest, of the converted property.

Count Four -- Unjust Enrichment Against Defendant MagCorp

71. The United States reasserts the previous allegations in paras. 1 - 70.
72. MagCorp has been unjustly enriched by the amount of money it has received in connection with minerals harvested from the federal mineral estate.
73. The United States is entitled to recover the amount of money, plus interest, MagCorp has been unjustly enriched as a result of its harvest of minerals belonging to the United States.

Count Five -- Fraudulent Conveyances Under the Federal Debt Collection Procedure Act (FDCPA), 38 U.S.C. § 3001 et seq.

74. The United States reasserts the previous allegations in paras. 1 - 73.
75. Section 3304 of the FDCPA, 28 U.S.C. § 3304, provides:
 - (a) DEBT ARISING BEFORE TRANSFER.- . . . [A] transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States which arises before the transfer is made or the obligation is incurred if –
 - (1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and
 - (B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or
 - (2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and
 - (B) the insider had reasonable cause to believe that the debtor was insolvent.
 - (b) TRANSFERS WITHOUT REGARD TO DATE OF JUDGMENT.- (1) . . . [A] transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation incurred, if the debtor makes the transfer or incurs the obligation –
 - (A) with actual intent to hinder, delay, or defraud a creditor; or
 - (B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor –
 - (ii) intended to incur, or believed or reasonably should have

believed that he would incur, debts beyond his ability to pay as they became due.

76. Section 3306(a) of the FDCPA, 28 U.S.C. § 3306(a), establishes a cause of action for (a) the avoidance of a fraudulent transfer or obligation to the extent necessary to satisfy a debt to the United States; (b) a remedy against the asset transferred or other property of the transferee; or (c) any other relief the circumstances may require.
77. Section 3002(3)(B) of the FDCPA, 28 U.S.C. § 3002(3)(B) defines the term “debt” to include “an amount that is owing to the United States on account of a . . . penalty, . . . or other source of indebtedness to the United States”
78. MagCorp owes a debt to the United States resulting from its trespass and conversion of federal minerals, its unjust enrichment, and its knowing submission of false statements regarding its trespass and conversion of federal minerals.
79. MagCorp and (through theories of alter ego and piercing the corporate veil) the remaining Defendants are, and at all relevant times were, a “debtor” of the United States, within the meaning of the FDCPA.
80. Under Section 3302(a) of the FDCPA, 28 U.S.C. § 3002(3)(a) a debtor is “insolvent” if the sum of the debtor’s debt is greater than all of the debtor’s assets at a fair valuation.
81. Under Section 3301(6) of the FDCPA, 28 U.S.C. § 3301(6), a “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.
82. At the time of each transfer or obligation (hereinafter “transaction”) referenced in

Paragraphs 49 - 56, above, MagCorp was or became insolvent, within the meaning of Section 3304(a)(1)(B) and 3304(a)(2) of the FDCPA.

83. After a reasonable opportunity for further investigation or discovery, the evidence is likely to show that MagCorp and Metals made the transaction referenced in Paragraph 48 above without receiving a reasonably equivalent value in exchange for the transaction, within the meaning of Sections 3304(a)(1)(A) and 3304(b)(1)(B) of the FDCPA.
84. After a reasonable opportunity for further investigation or discovery, the evidence is likely to show that MagCorp and Metals made all or some of the transactions referenced in Paragraphs 48 - 55, above, with actual intent to hinder, delay or defraud a creditor, within the meaning of Sections 3304(b)(1)(A) and 3304(b)(2) of the FDCPA.
85. After a reasonable opportunity for further investigation or discovery, the evidence is likely to show that at the time of the transactions referenced in Paragraphs 48 - 55, above, Metals and its subsidiaries [then MagCorp and Sabel] intended to incur, or believed or reasonably should have believed they would incur, debts beyond their ability to pay as they became due, within the meaning of Section 3304(b)(1)(B)(ii) of the FDCPA.
86. After a reasonable opportunity for further investigation or discovery, the evidence is likely to show that at the time of the transactions referenced in Paragraphs 48 - 55, above, Metals and its subsidiaries (MagCorp and Sabel) engaged in a business transaction after which their remaining assets were unreasonably small in relation to their business, within the meaning of Section 3304(b)(1)(B)(i) of the FDCPA.
87. As the transactions referenced in Paragraphs 48 - 55, above, were fraudulent with respect to a debt owed by MagCorp to the United States within the meaning of Sections

3304(a)(1), 3304(a)(2) and 3304(b) of the FDCPA, these transactions should be unwound and the assets should be ordered transferred to the United States. Alternatively, Rennert, Group, the Rennert Trusts, D'Atri and unknown trustees or beneficiaries of the Rennert Trusts, Metals, MagCorp, and KemMag, should be ordered to pay the value of these assets to the United States.

88. Due to the above described acts of the Defendants Rennert, Group, the Rennert Trusts, D'Atri and unknown trustees or beneficiaries of the Rennert Trusts, Metals, MagCorp, and KemMag, the United States has been injured because these Defendants have rendered or are attempting to render Defendant MagCorp insolvent as against the debts owed to the United States or had reasonable cause to believe MagCorp was insolvent as against such debts.
89. The above acts of Defendants Rennert, Group, the Rennert Trusts, D'Atri and unknown trustees or beneficiaries of the Rennert Trusts, Metals, MagCorp, and KemMag, have demonstrated their intent to hinder, delay and defraud the United States by assigning, disposing, removing, concealing, ill treating, wasting, destroying, and converting property that would otherwise be available to satisfy Defendant MagCorp's debts to the United States, or, in the alternative, that these Defendants entered into said transactions which rendered Defendant MagCorp insolvent in the face of its debt to the United States or failed to receive a reasonably equivalent value in exchange for the transaction.
90. Section 3101 of the FDCPA, 28 U.S.C. § 3101, Prejudgment Remedies, provides:

(a) APPLICATION

- (1) The United States may, in a proceeding in conjunction with the complaint or at any time after

the filing of a civil action on a claim for a debt,
make application under oath to a court to issue any
prejudgment remedy.

(b) GROUNDS

... [A] prejudgment remedy may be granted by any court if the
United States shows reasonable cause to believe that –

(1) the debtor

(B) has or is about to assign, dispose, remove,
conceal, ill treat, waste, or destroy property with the
effect of hindering, delaying, or defrauding the
United States;

(C) has or is about to convert the debtor's property
into money, securities, or evidence of debt in a
manner prejudicial to the United States with the
effect of hindering, delaying, or defrauding the
United States.

91. The property of Defendants Rennert, Group, the Rennert Trusts, D'Atri and unknown trustees or beneficiaries of the Rennert Trusts, Metals, MagCorp, and KemMag, including but not limited to the funds in the Rennert Trusts, is subject to prejudgment remedies under the FDCPA, section 3101, including but not limited to attachment, receivership, garnishment, and/or sequestration.

Count Six – Violations of the Federal Priority Act (FPA), 31 U.S.C. § 3713

92. The United States reasserts the previous allegations in paras. 1 - 91.
93. Pursuant to 31 U.S.C. § 3713(a), claims of the United States shall be paid first when a person indebted to the United States is insolvent and (i) makes a "voluntary assignment" of property, (ii) property of the debtor, if absent, is attached, or (iii) an act of bankruptcy is committed.
94. Pursuant to 31 U.S.C. § 3713(b), a representative of a person paying any part of a debt of the person before paying a claim of the United States is liable to the extent of the

payment for unpaid claims of the United States.

95. Each of the United States' claims made under counts 1 - 4 is "unpaid" within the meaning of 31 U.S.C. § 3713(b).
96. The transfers referenced in Paragraphs 48 - 55 above, constitute "voluntary assignment[s] of property," within the meaning of 31 U.S.C. § 3713(a).
97. The transfers referenced in Paragraphs 48 - 55, above, constitute "act[s] of bankruptcy," within the meaning of 31 U.S.C. § 3713(a).
98. After a reasonable opportunity for further investigation or discovery, the evidence is likely to show that when Metals and MagCorp made the transfers referenced in Paragraphs 48 - 55, above, MagCorp was or became "insolvent" and "without enough property to pay all debts," within the meaning of 31 U.S.C. § 3713(a).
99. MagCorp's debt to the United States triggered the United States' priority over the payments referenced in Paragraphs 48 - 55, above.
100. Defendants Ira Rennert, Group, the Rennert Trusts, D'Atri and unknown trustees or beneficiaries of the Rennert Trusts, Metals, MagCorp, and KemMag, are transferees of payment or property transferred by MagCorp, over which the United States had priority.
101. Defendants Ira Rennert, Group, the Rennert Trusts, D'Atri and unknown trustees or beneficiaries of the Rennert Trusts, Metals, MagCorp, and KemMag, are each liable as a "representative" of MagCorp, within the meaning of 31 U.S.C. § 3713(b), to the extent of MagCorp's transfers referenced in Paragraphs 48 - 55 above.

Request for Relief

The United States requests that judgment be entered in its favor as follows:


- a. On Count One (False Claims Act) against MagCorp, for statutory damages and a civil penalties for each false statement;
- b. On Count Two (Trespass) against MagCorp, three times the full value of the minerals extracted or sold, without deduction for labor or expenses; or in the alternative, either the full value of the minerals without deduction for labor or expenses, or the full value of the minerals before severance;
- c. On Count Three (Conversion) against MagCorp, for the value of the minerals converted by MagCorp, plus interest;
- d. On Count Four (Unjust Enrichment) against MagCorp, for the amount of money MagCorp has been unjustly enriched by as a result of its harvest of minerals belonging to the United States;
- e. Pierce the corporate veil under federal and state law to hold Defendant Ira Leon Rennert, as well as Defendants the Rennert Trusts, Group, D'Atri and unknown trustees and beneficiaries of the Rennert Trusts, and Metals responsible for the debts and liabilities of MagCorp;
- f. Enter a declaratory judgment pursuant to Section 3306(a) of the FDCPA, 28 U.S.C. § 3306(a), that transactions described in Paragraphs 48 - 55, above, were fraudulent conveyances with respect to MagCorp's debt to the United States and therefore the transactions are null and void to the extent necessary to satisfy MagCorp's debt to the United States;
- g. With respect to the transactions described in Paragraphs 48 - 55, above, award the United States a remedy pursuant to Section 3306(a) of the FDCPA, 28 U.S.C. §

3306(a), against the assets transferred or other property of the transferee necessary to the extent necessary to satisfy MagCorp's debt to the United States, or, in the alternative, award the United States pre-judgment remedies under Section 3101 of the FDCPA, 28 U.S.C. § 3101, including but not limited to attachment, receivership, garnishment, and/or sequestration;

- h. Award judgment that Defendants Rennert, the Rennert Trusts, Group, D'Atri and unknown trustees or beneficiaries of the Rennert Trusts, Metals, and MagCorp are each liable to the United States, to the extent that they made or directed transfers, assignments or payments by MagCorp before paying claims of the United States, in violation of Section 3713(b) of the FPA, 31 U.S.C. § 3713(b);
- i. On Count Seven (Quiet Title) against the State, a declaratory judgment quieting title in the United States to the minerals on and underlying the federal lands, and the minerals contained in the waters on and underlying the federal lands of the West Desert upon which the State pumped water from the Great Salt Lake as part of its West Desert Pumping Project, including those minerals occurring in the water so pumped;
- j. For applicable surcharge, costs and fees;
- k. For appropriate permanent injunctive relief; and
- l. For such further relief as the court deems just and equitable.

DATED this 16TH day of January, 2001.

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Trial Attorneys

Exhibit E

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		PROOF OF CLAIM
Name of Debtor <u>Magnesium Corp. of America</u>		Case Number <u>01-14312 (REG)</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>Bureau of Land Management, Department of the Interior</u>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and address where notices should be sent: <u>Office of Field Solicitor</u> <u>125 S. State St., suite 6201</u> <u>Salt Lake City, UT 84138</u>		
Telephone number: <u>(801) 524-5677</u>		THIS SPACE IS FOR COURT USE ONLY
Account or other number by which creditor identifies debtor: <u>UTU-54897 (UT-023)</u>		Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: <u>Feb. 20, 2002</u> <input checked="" type="checkbox"/> amends
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>see attached</u>		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ (date) to _____ (date)		
2. Date debt was incurred: <u>8/1993 - present</u>		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ <u>see attached</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY <div style="transform: rotate(-45deg); font-family: sans-serif; font-weight: bold;"> FILED 2002 MAR 27 P 4:08 S.D.N.Y. U.S. BANKRUPTCY COURT </div>
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date <u>3/27/2002</u>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>Edward Chang</u> <u>Assistant United States Attorney</u>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

FILE COPY

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		PROOF OF CLAIM
Name of Debtor <u>Renco Metals, Inc.</u>		Case Number <u>01-14311 (REG)</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>Bureau of Land Management, Department of the Interior</u>		<div style="font-size: x-small;"> <input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court. </div>
Name and address where notices should be sent: <u>Office of Field Solicitor</u> <u>125 S. State St., suite 6201</u> <u>Salt Lake City, UT 84138</u>		
Telephone number: <u>(801) 524-5677</u>		
Account or other number by which creditor identifies debtor: <u>UTU-54897 (UT-023)</u>		Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: <u>Feb. 20, 2002</u> <input checked="" type="checkbox"/> amends
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> 1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>see attached</u> </div> <div style="width: 50%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ <div style="text-align: center; font-size: x-small;">(date) (date)</div> </div> </div>		
2. Date debt was incurred: <u>8/1993 - present</u>		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ <u>see attached</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; opacity: 0.5; transform: rotate(-45deg);"> SDNY MAR 27 P 4:08 </div>
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date <u>3/27/2002</u>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>Edward Chang</u> <u>Assistant United States Attorney</u>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

JAMES B. COMEY
 United States Attorney for the
 Southern District of New York
 Attorney for United States of America
 By: Edward Chang (EC-8218)
 Assistant United States Attorney
 100 Church Street, 19th Floor
 New York, NY 10007
 Telephone: (718) 422-5628

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----	x	Chapter 11
In re	:	
	:	
MAGNESIUM CORPORATION	:	Case No. 01-14312 (REG)
OF AMERICA,	:	
	:	
Debtor.	:	
-----	x	(Jointly Administered)
In re	:	
	:	
RENCO METALS, INC.,	:	Case No. 01-41311 (REG)
	:	
Debtor.	:	
-----	x	

**AMENDED PROOF OF CLAIM OF THE UNITED STATES ON BEHALF
 OF THE UNITED STATES BUREAU OF LAND MANAGEMENT**

A. Preliminary Statement

1. This Proof of Claim is filed by the United States at the request of the United States Bureau of Land Management ("BLM"). The Attorney General is authorized to make this Proof of Claim on behalf of the United States. This Proof of Claim relates to:

(a) the liability of debtor Magnesium Corporation of America ("MagCorp") and debtor Renco Metals, Inc. ("Metals"; collectively, "Debtors") for reclamation of federal lands required pursuant to a right-of-way grant, serial number U-54897, and

(b) the liability of the Debtors for unpaid rent on ROW U-54897.

B. Facts

2. In 1986, Amax Magnesium, Inc. ("Amax"), a predecessor in interest to MagCorp, received from BLM a right-of-way grant ("ROW"), serial number U-54897, to construct a canal and evaporative ponds ("Knolls Facility") on property owned by the United States and managed by the BLM. Attached as exhibit A is a copy of relevant provisions of ROW U-54897.

3. ROW U-54897 requires MagCorp to pay rent in advance on an annual basis. By letter dated January 29, 2002, MagCorp was informed that rent was past due for calendar year 2002 in the amount of \$68,969.96. That amount remains due and owing. Attached as exhibit B is the letter, dated January 29, 2002, demanding payment from MagCorp.

4. ROW U-54897 further provides: "Prior to abandonment of the grant, the holder shall contact the Authorized Officer to arrange a joint inspection of the grant area. The inspection will be held to agree on an acceptable abandonment and rehabilitation plan. The Authorized Officer must approve the plan in writing prior to the holder commencing any abandonment and rehabilitation activities."

5. The Knolls Facility has not been used for any production purposes since December, 1999.

6. MagCorp is a closely held corporation owned wholly by Metals and controlled by Metals and the owners of Metals. Because of significant transfers of assets to Metals and the owners of Metals, MagCorp is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. Metals is liable for MagCorp's debts and obligations to the United States.

C. Claim for Unpaid Rent

6. The United States hereby asserts an administrative priority claim against the Debtors for unpaid rent as described in paragraph 3.

D. Claims for Reclamation

7. The Salt Lake Field Office of the BLM has determined that the reclamation requirements for ROW U-54897 include, without limitation, reclamation relating to ditches and berms developed during ditch construction, exterior dikes of the evaporation ponds, interior dikes of the evaporation ponds, brine storage ponds, removal of structural facilities, roads, and reestablishment of cadastral survey monuments. BLM's cost estimate for the reclamation is \$6,051,640.

8. The United States hereby asserts a claim against the Debtors for the reclamation of federal lands pursuant to ROW U-54897. This claim is filed on a protective basis as set forth in paragraphs 9 and 10 below.

9. Certain statutory and regulatory obligations of the Debtors, including the Debtors' obligations under ROW U-54897, are mandatory injunctive obligations that are not dischargeable claims within the meaning of Section 101(5) of the Bankruptcy Code. It is the United States' position that it is not required to file a Proof of Claim with respect to such mandatory injunctive obligations of the Debtors. The Debtors, including any successor to MagCorp or Metals, must comply with such mandatory injunctive obligations.

10. This Proof of Claim is protective in nature as to any injunctive obligations of the Debtors under ROW U-54897 or any pertinent statutes or regulations. Court-ordered and regulatory obligations of the Debtors are mandatory injunctive obligations of the Debtors for

which proofs of claim need not be filed under the Bankruptcy Code. Nevertheless, this claim is filed in protective fashion to protect the United States' rights with respect to such injunctive obligations. The United States reserves the right to take future actions to enforce any such obligations of the Debtors. Nothing in this Proof of Claim constitutes an election of remedies or a waiver of any rights of the United States.

E. Conclusion

11. This Proof of Claim reflects the known liability of the Debtors to the United States on behalf of the BLM. The United States reserves the right further to amend this claim to assert subsequently discovered liabilities. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the Debtor by this or any other federal agency.

12. The United States is entitled to administrative priority for any post-petition liabilities of the Debtors. This Proof of Claim is filed only in protective fashion with respect to such post-petition liabilities and is not a waiver of the United States' right to administrative priority status. The United States will file any application for administrative expense priority at the appropriate time.

Dated: March 27, 2002
New York, NY

JAMES B. COMEY
United States Attorney for the
Southern District of New York

By:

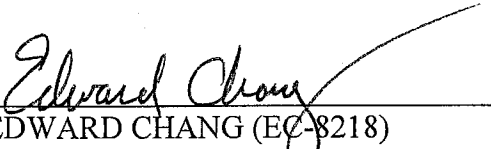

EDWARD CHANG (EC-8218)
Assistant United States Attorney
100 Church Street, 19th floor
New York, New York 10007
Tel. (718) 422-5628

EXHIBIT A

U-54897
2800
(UT-027)

AMENDED RIGHT-OF-WAY

SECTION A

1. There is hereby granted, pursuant to Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761), a nonexclusive, non-possessory right-of-way grant to:

MAGCORP
Magnesium Corporation of America
238 North 2200 West
Salt Lake City, Utah 84116

In case of change of address, the holder shall immediately notify the Authorized Officer.

2. To use, subject to terms and conditions set out below, the following described public land:

Evaporative Pond portion: subtotal 53,212 acres

T. 1 N., R. 12 W., SLM, UT:

Sections 4 - 7, All
Section 8, N 1/2, SW 1/4
Section 9, N 1/2
Section 17, W 1/2
Sections 18 & 19, All
Section 20, NW 1/4, S 1/2
Section 21, S 1/2
Sections 28 - 31, All
Section 33, All

Excluding private lands in Sections 28 & 33

T. 1 S., R. 12 W., SLM, UT:

Sections 4 - 9, All
Sections 17, 18, those portions north of I-80

T. 1 N., R. 13 W., SLM, UT:

Sections 1, 3 - 15, 17 - 31, 33 - 35, All

T. 1 S., R. 13 W., SLM, UT:

Sections 1, 3 - 12, All
Sections 13 - 15, 17, 18, those portions north of I-80

T. 1 N., R. 14 W., SLM, UT:
Sections 1, 3, 4, 9 -15, 23 - 26, All

T. 1 S., R. 14 W., SLM, UT:
Section 1, All

Water Well subtotal .08 acres

A 60' X 60' site within the following legal subdivisions:

T. 1 S., R. 12 W., SLM, UT:
Section 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$

Haul Roads: subtotal 72.46 acres

Existing Road

T. 1 S., R. 12 W., SLM, UT:
Section 3, W $\frac{1}{2}$ W $\frac{1}{2}$
Section 4, SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 9, E $\frac{1}{2}$ E $\frac{1}{2}$
Section 10, NW $\frac{1}{4}$ NW $\frac{1}{4}$

T. 1 N., R. 12 W., SLM, UT:
Section 3, Lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{2}$
Section 10, E $\frac{1}{2}$ W $\frac{1}{2}$
Section 15, E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{2}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 22, NW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 34, W $\frac{1}{2}$ SW $\frac{1}{2}$

Haul Road No. 2

T. 1 S., R. 12 W., SLM, UT:
Section 13, SE $\frac{1}{4}$ SE $\frac{1}{4}$

T. 1 S., R. 11 W., SLM, UT:
Section 18, W $\frac{1}{2}$ W $\frac{1}{2}$

Haul Road No. 3

T. 1 S., R. 12 W., SLM, UT:
Section 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$

Haul Road No. 4

T. 1 N., R. 12 W., SLM, UT:
Section 22, NW $\frac{1}{4}$ SW $\frac{1}{4}$

Haul Road No. 5

T. 1 N., R. 12 W., SLM, UT:
Section 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{2}$, S $\frac{1}{2}$ SE $\frac{1}{2}$

Haul Road No. 6

T. 1 S., R. 12 W., SLM, UT:
 Section 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 8, SE $\frac{1}{4}$
 Section 9, NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 17, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$

Brine Pipeline subtotal 155.83 acres

T. 1 S., R. 13 W., SLM, UT:
 Section 13, S $\frac{1}{2}$

T. 1 S., R. 12 W., SLM, UT:
 Section 13, S $\frac{1}{2}$
 Section 14, S $\frac{1}{2}$
 Section 15, S $\frac{1}{2}$
 Section 17, S $\frac{1}{2}$
 Section 18, S $\frac{1}{2}$

T. 1 S., R. 11 W., SLM, UT:
 Section 1, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 9, S $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 10, S $\frac{1}{2}$
 Section 11, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 12, N $\frac{1}{2}$ N $\frac{1}{2}$
 Section 17, N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 18, S $\frac{1}{2}$

T. 1 S., R. 10 W., SLM, UT:
 Section 5, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 6, Lots 6, 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$

T. 1 N., R. 10 W., SLM, UT:
 Section 13, S $\frac{1}{2}$
 Section 23, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 24, NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 26, NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 27, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
 Section 33, NE $\frac{1}{4}$
 Section 34, NW $\frac{1}{4}$

T. 1 N., R. 9 W., SLM, UT:
 Section 17, N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 18, Lots 2, 3, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$
 Section 21, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 22, S $\frac{1}{2}$
 Section 25, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 26, W $\frac{1}{2}$, SE $\frac{1}{4}$
 Section 27, SW $\frac{1}{4}$

T. 1 S., R. 8 W., SLM, UT:
 Section 5, Lots 2 - 4

T. 1 N., R. 8 W., SLM, UT:
 Section 3, Lot 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 10, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 15, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 22, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$
 Section 27, NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 28, E $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 30, SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 31, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, SE $\frac{1}{4}$
 Section 33, NW $\frac{1}{4}$ SW $\frac{1}{4}$

T. 2. N., R. 8 W., SLM, UT:
 Section 22, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 27, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 34, E $\frac{1}{2}$ W $\frac{1}{2}$

Temporary Water Pipeline No. 1 subtotal 6.66 acres

T. 1 S., R. 11 W., SLM, UT:
 Section 18, W $\frac{1}{2}$ W $\frac{1}{2}$

T. 1 S., R. 12 W., SLM, UT:
 Section 13, E $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 14, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 15, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 17, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$

Temporary Water Pipeline No. 2 subtotal 1.45 acres

T. 1 N., R. 12 W., SLM, UT:
 Section 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$

3. Description of the Right-of-Way Facility and Purpose:

The pond portion of the right-of-way is for the construction, operation, use, and maintenance of an evaporative pond system, totalling approximately 53,212 acres.

The road portion of the right-of-way is for the operation, use and maintenance of an existing road, 60 feet wide, and for the construction, operation, use and maintenance of new roads, 80 feet wide. The total acreage for these roads is approximately 58 acres.

The pipeline portion of the right-of-way is for the construction, operation, use and maintenance of a 41 mile pipeline system, 20 feet wide, with the construction of this pipeline, and is for a 50 foot construction width, totalling an additional 150 acres.

The amended brine pipeline portion of the right-of-way is for the construction, operation, use and maintenance of a relocated portion of a 41 mile pipeline system, 12,700 feet long, 20 foot wide, totalling 5.83 acres.

The water well right-of-way is for the construction, use and maintenance of a water well site 60 feet by 60 feet, involving .08 acres.

The temporary haul road is for the operation, use and maintenance of an existing road, approximately 10,500 feet in length, and 60 feet in width, totalling 14.46 acres.

The two temporary water pipelines are for the construction, operation, use and maintenance of two water pipelines associated with project construction. Temporary Water Pipeline No. 1 is approximately 29,000 in length, 10 feet in width, and totals 6.66 acres. Temporary Water Pipeline No. 2 is approximately 6300 feet in length, 10 feet in width, and totals 1.45 acres.

The total of this right-of-way is 53,448.48 acres.

TERMS AND CONDITIONS

SECTION B

1. The right-of-way holder agrees to comply with all the applicable regulations contained in 43 CFR 2800.
2. If the right-of-way holder violates any of the terms and conditions of the right-of-way, the Authorized Officer may, after giving written notice, declare the grant terminated.
3. This grant is subject to all valid rights existing on the effective date of this grant.
4. The right-of-way shall be relinquished to the United States if the authorized uses are no longer needed.
5. All other terms and conditions. Compliance will be in accordance with the terms and conditions as specified herein and in Exhibit A, attached hereto and made a part hereof.
6. Rental.

The holder will pay in advance an annual rental to the United States. The holder will make each subsequent annual rental payment before the next succeeding anniversary of the effective date.

a. The fair market rental for the 7,596.48 acres containing capital investments (see Exhibit B), the office, shop, main ponds, pipelines, roads, wells, and canals, shall be \$1.10 per acre. This rental rate shall be subject to periodic reappraisal, at five-year intervals beginning in June 1993. These reappraisals shall be based on fair market value.

b. BLM will establish a rental rate of 15% or \$0.165 per acre on those remaining public lands currently under the right-of-way containing other ponds and dikes (45,852 acres). The rental rate on these lands will remain at 15% of a base, but that base rate shall be subject to periodic reappraisal. Magcorp will not use these 45,852 acres as long as they are paying this 15% rate.

c. Should these or any or all of these 45,852 acres once again become part of the operation, this rental will immediately increase to the fair market rate at that time. Likewise, should any of the 7,596.48 acres become non-essential and not used for production, upon notification to and verification by BLM, the rate for those lands shall drop to the 15% rate, at the time of the next scheduled reappraisal.

d. BLM retains the right to issue a right-of-way grant, to a third party, on any portion of this 45,852 acres with concurrence by Magcorp. This will not affect the rental paid by Magcorp, unless Magcorp does not agree with the issuance of another right-of-way to a third party. In such a situation,

BLM will not issue the right-of-way in question, but Magcorp's rental on those lands (the acreage applied for by the other party) will immediately increase to the fair market rate at that time.

7. This right-of-way grant will terminate 30 years from the effective date, unless prior thereto it is relinquished, abandoned, terminated or otherwise modified pursuant to the terms and conditions of this grant or of any applicable Federal law or regulation.

This right-of-way grant may be renewed. If renewed, right-of-way will be subject to regulations existing at the time of renewal, and such other terms and conditions deemed necessary to protect the public interest.

SECTION C

The effective date of this right-of-way grant is the date of execution by the Authorized Officer.

The undersigned agrees to the terms and conditions of this right-of-way grant:

Magnesium Corporation of America
(Name of Corporation)

By: Lee R. Brown

Title: Vice President
(Affix Corporate Seal)

The right-of-way grant is executed this 9 day of August, 1993

Howard Hadick
Authorized Officer

Pony Express Area Manager
Title

EXHIBIT A
AMENDED RIGHT-OF-WAY U-54897
STIPULATIONS

1. There is reserved to the Authorized Officer, the right to grant additional rights-of-way or permits for compatible uses on, over, under or adjacent to the land involved in this grant.
2. The holder shall, to the fullest extent of the law, indemnify the United States against any liability, damage, or claims arising in connection with the holder's use or occupancy of public land under this grant.
3. The holder shall conduct all construction, operation and maintenance activities in a manner that will avoid or minimize degradation of air, land and water quality. All construction work and subsequent use of the right-of-way shall be consistent with applicable Federal, State and local laws and regulations relating to safety, water quality, and public health.
4. All construction activities shall be confined to the minimum area necessary and shall not exceed the established area of the right-of-way.
5. The holder shall do everything reasonable within its power and shall require its employees, contractors, and employees of contractors to do everything reasonable within their power, both independently and upon request of the Bureau, to prevent and suppress fires on or near the land to be occupied under this grant. When requested by the Authorized Officer, the holder shall make their equipment or the equipment of their contractors temporarily available for fighting fires caused by any activity associated with this grant.
6. During construction, the holder shall regulate access and vehicular traffic as required to protect the public, wildlife, and livestock from hazards associated with the project.
7. Since portions of this right-of-way will be co-used with rights-of-way U-47260 and U-54898, the holder shall provide evidence satisfactory to the Authorized Officer that road use agreements have been entered into with the holders of these rights-of-way.
8. Construction-related traffic shall be restricted to routes approved by the Authorized Officer. New access roads or cross-country vehicle travel will not be permitted unless prior written approval is given by the Authorized Officer. Authorized roads used by the holder shall be rehabilitated or maintained when construction activities are complete as approved by the Authorized Officer.

9. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the Authorized Officer. The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate action to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the Authorized Officer after consulting with the holder.

10. The holder shall promptly remove and dispose of all waste caused by its activities as directed by the Authorized Officer. The term "waste" as used herein means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, petroleum products, ashes and equipment. Toxic material shall not be released into any lake or water drainage. If facilities authorized for construction under this right-of-way grant use Polychlorinated Biphenyls (PCBs), such use shall be in a totally enclosed manner in accordance with provisions of the Toxic Substances Control Act of 1976, as amended (40 CFR Part 761). Additionally, any release of PCBs (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR Part 117 shall be reported as required by law. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any hazardous material shall be furnished to the Authorized Officer within 5 working days of the occurrence of the spill or release.

11. The holder will comply with all State, county, and local government laws and regulations which apply to this project.

12. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the Authorized Officer and the respective installing authority, if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands of the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the Authorized Officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

13. The holder shall not initiate any construction or other surface disturbing activities on the right-of-way without the prior written authorization of the Authorized Officer. Such authorization shall be a written notice to proceed issued by the Authorized Officer. Any notice to proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.

14. The holder shall submit plans of development that describe in detail the construction, operation, and maintenance of the right-of-way and its associated improvements or facilities. The degree and scope of these plans will vary depending upon (1) the complexity of that portion of the improvements or facilities, (2) the anticipated conflicts that require mitigation, and (3) additional technical information required by the Authorized Officer. The plans will be reviewed and, if appropriate, modified and approved by the Authorized Officer. An approved plan of development shall be made a part of the Notice to Proceed.

15. If determined to be necessary based upon the information submitted in any plan of development, the Authorized Officer may require a bond or other security to be furnished at a date that would be specified at the time the bond or security is required. The amount of the bond or security shall be determined by the Authorized Officer. This bond or security would be maintained in effect until construction has been completed and determined to be in compliance with the plan of development, as determined by the Authorized Officer.

16. Prior to beginning construction, the holder will furnish all contractors copies of these stipulations (Exhibits A and B, and any additional stipulations in the Notices to Proceed) and explain the limitations imposed by said stipulations.

17. Prior to abandonment of the grant, the holder shall contact the Authorized Officer to arrange a joint inspection of the grant area. The inspection will be held to agree on an acceptable abandonment and rehabilitation plan. The Authorized Officer must approve the plan in writing prior to the holder commencing any abandonment and rehabilitation activities.

18. The holder will comply with all State, county, and local government laws and regulations which apply to this project.

EXHIBIT B

Evaporative Pond portion: subtotal 7,360 acres

T. 1 S., R. 12 W., SLM, UT:
Sections 5 - 7, All
Section 8, NW 1/4

T. 1 S., R. 13 W., SLM, UT:
Sections 1, 6, 7, 11 -15, All
Section 18, NW 1/4

Water Well subtotal .08 acres

A 60' X 60' site within the following legal subdivisions:

T. 1 S., R. 12 W., SLM, UT:
Section 13, NE 1/4 NE 1/4

Haul Roads: subtotal 72.46 acres

Existing Road

T. 1 S., R. 12 W., SLM, UT:
Section 3, W 1/2 W 1/2
Section 4, SE 1/4 SE 1/4
Section 9, E 1/2 E 1/2
Section 10, NW 1/4 NW 1/4

T. 1 N., R. 12 W., SLM, UT:
Section 3, Lot 2, SW 1/4 NE 1/4, SE 1/4 NW 1/4, E 1/2 SW 1/4
Section 10, E 1/2 W 1/2
Section 15, E 1/2 NW 1/4, N 1/2 SW 1/4, SW 1/4 SW 1/4
Section 22, NW 1/4 NW 1/4
Section 34, W 1/2 SW 1/4

Haul Road No. 2

T. 1 S., R. 12 W., SLM, UT:
Section 13, SE 1/4 SE 1/4

T. 1 S., R. 11 W., SLM, UT:
Section 18, W 1/2 W 1/2

Haul Road No. 3

T. 1 S., R. 12 W., SLM, UT:
Section 3, NW 1/4 NW 1/4

Haul Road No. 4

T. 1 N., R. 12 W., SLM, UT:
Section 22, NW 1/4 SW 1/4

Haul Road No. 5

T. 1 N., R. 12 W., SLM, UT:
Section 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$

Haul Road No. 6

T. 1 S., R. 12 W., SLM, UT:
Section 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$
Section 8, SE $\frac{1}{4}$
Section 9, NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 17, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$

Brine Pipeline subtotal 155.83 acres

T. 1 S., R. 13 W., SLM, UT:
Section 13, S $\frac{1}{2}$

T. 1 S., R. 12 W., SLM, UT:
Section 13, S $\frac{1}{2}$
Section 14, S $\frac{1}{2}$
Section 15, S $\frac{1}{2}$
Section 17, S $\frac{1}{2}$
Section 18, S $\frac{1}{2}$

T. 1 S., R. 11 W., SLM, UT:
Section 1, S $\frac{1}{2}$ S $\frac{1}{2}$
Section 9, S $\frac{1}{2}$ SE $\frac{1}{4}$
Section 10, S $\frac{1}{2}$
Section 11, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
Section 12, N $\frac{1}{2}$ N $\frac{1}{2}$
Section 17, N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
Section 18, S $\frac{1}{2}$

T. 1 S., R. 10 W., SLM, UT:
Section 5, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
Section 6, Lots 6, 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$

T. 1 N., R. 10 W., SLM, UT:
Section 13, S $\frac{1}{2}$
Section 23, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 24, NW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 26, NW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 27, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 33, NE $\frac{1}{4}$
Section 34, NW $\frac{1}{4}$

T. 1 N., R. 9 W., SLM, UT:

Section 17, N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 18, Lots 2, 3, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$
 Section 21, NE $\frac{1}{4}$, NE $\frac{1}{2}$ NW $\frac{1}{4}$
 Section 22, S $\frac{1}{2}$
 Section 25, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 26, W $\frac{1}{2}$, SE $\frac{1}{4}$
 Section 27, SW $\frac{1}{4}$

T. 1 S., R. 8 W., SLM, UT:

Section 5, Lots 2 - 4

T. 1 N., R. 8 W., SLM, UT:

Section 3, Lot 3, SE $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 10, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 15, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 22, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$
 Section 27, NW $\frac{1}{2}$ NW $\frac{1}{4}$
 Section 28, E $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 30, SW $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 31, SW $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, SE $\frac{1}{4}$
 Section 33, NW $\frac{1}{2}$ SW $\frac{1}{4}$

T. 2. N., R. 8 W., SLM, UT:

Section 22, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 27, E $\frac{1}{2}$ W $\frac{1}{2}$
 Section 34, E $\frac{1}{2}$ W $\frac{1}{2}$

Temporary Water Pipeline No. 1 subtotal 6.66 acres

T. 1 S., R. 11 W., SLM, UT:

Section 18, W $\frac{1}{2}$ W $\frac{1}{2}$

T. 1 S., R. 12 W., SLM, UT:

Section 13, E $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 14, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 15, S $\frac{1}{2}$ S $\frac{1}{2}$
 Section 17, SE $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$

Temporary Water Pipeline No. 2 subtotal 1.45 acres

T. 1 N., R. 12 W., SLM, UT:

Section 3, SW $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$

3. Description of the Right-of-Way Facility and Purpose:

The total of the area of capital investments is 7,596.48 acres.

EXHIBIT B

MAGNESIUM CORP OF AMERICA
 SALT LAKE CITY UT BRANCH 02
 238 N 2200 W
 SALT LAKE CITY UT 84116

 If the above Name or Address are incorrect, please enter corrections.

If the rental is not paid when due, after notice,
 action will be taken to terminate the authorization.

BLM Tax Number: 84-0437540

BILLING NOTICE
 RETURN THIS NOTICE WITH REMITTANCE PAYABLE TO:

DEPARTMENT OF THE INTERIOR-BLM
 Salt Lake Field Office
 2370 South 2300 West

Salt Lake City UT 84119

PAY THIS AMOUNT: \$***68,969.96

BILLING SUMMARY

Due Date: 01/01/2002

SERIAL-NUMBER/
 REFERENCE-NUMBER

BILLING PERIOD/ FUND SYMBOL	FUND CODE	COMM CODE	LAND TYPE	GEO ST	GEO CNTY	BILL AMOUNT
From: 01/01/2002					To: 01/01/2003	
14 3220	680	18		49	045	68969.96

UTU 054897

TOTAL BILL AMOUNT: \$***68,969.96

TOTAL PAYMENTS RECEIVED: \$*****0.00

Balance: \$***68,969.96

SURNAME
SW
OK
1/28/02

2800
UTU-54897
(UT-023)

File

Certified Mail # 7001 1140 0001 2632 0817
Return Receipt Requested

JAN 29 2002

Magnesium Corp of America
238 North 2200 West
Salt Lake City, Utah 84116

Re: Unpaid Right-of-Way Rental Fees for UTU-54897

Dear Right-of-Way Holder:

Our records indicate the calendar year 2002 rental for the above referenced right-of-way has not yet been paid. Per 43 CFR 2803.1-2(a), the holder of a right-of-way grant shall pay annually, in advance, the fair market rental value as determined by the authorized officer.

Please refer to the enclosed bill. Payment was due on January 1, 2002 and is now delinquent. Please remit the amount due within 15 days of receipt of this letter. Failure to do so may result in termination of the right-of-way.

Questions concerning this letter may be directed to Anita Jones at 801-977-4327 or Grace Jensen at 801-977-4372. We thank you for your help resolving this issue.

Sincerely,

Brad Palmer

Brad D. Palmer
Assistant Field Manager
Non-Renewable Resources

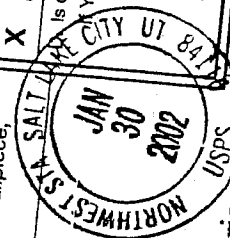
Enclosure
Bill

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Magnesium Corp of America
238 North 2200 West
Salt Lake City, Utah 84116

**COMPLETE THIS SECTION ON DELIVERY**A. Received by (Please Print Clearly) C. BAKERB. Date of Delivery 01-30-02C. Signature X C. BAKER

Is delivery address different from item 1? ☒ Agent ☐ Addressee
 YES, enter delivery address below: ☒ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from Service label)

7001 1140 0001 2632 0817

PS Form 3811, March 2001

Domestic Return Receipt

102595-01

Exhibit F

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		PROOF OF CLAIM
Name of Debtor Magnesium Corp. of America	Case Number 01-14312	THIS SPACE IS FOR COURT USE ONLY
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): Bureau of Land Management U.S. Department of the Interior	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input checked="" type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: Office of the Solicitor Suite 6201, Federal Building 125 South State Street Salt Lake City, UT 84138 Telephone number: (801) 524-5677		
Account or other number by which creditor identifies debtor:	Check here <input type="checkbox"/> replaces a previously filed claim, dated: 2/20/02 if this claim <input type="checkbox"/> amends 3/27/02	
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>see attached</u> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ (date) to _____ (date)		
2. Date debt was incurred: <u>1992-1997</u>		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ <u>see attached</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges <u>at time case filed</u> included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,300)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____): _____ <small>*Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date 4/19/04	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): Sarah S. Normand Asst. U.S. Attorney	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

COPY

FORM B10 (Official Form 10) (4/98)

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		PROOF OF CLAIM
Name of Debtor Renco Metals, Inc.	Case Number 01-41311	THIS SPACE IS FOR COURT USE ONLY
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): Bureau of Land Management U.S. Department of the Interior	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: Office of the Solicitor Suite 6201, Federal Building 125 South State Street Salt Lake City, UT 84138 Telephone number: (801)524-5677	Account or other number by which creditor identifies debtor:	Check here <input type="checkbox"/> replaces a previously filed claim, dated: 2/20/02 <input checked="" type="checkbox"/> amends 3/27/02
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>see attached</u> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
2. Date debt was incurred: <u>1992-1997</u>		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ <u>see attached</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,300)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date 4/19/04	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): Sarah S. Normand Asst. U.S. Attorney	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

DAVID N. KELLEY
 United States Attorney for the
 Southern District of New York
 Attorney for the United States of America
 By: Sarah S. Normand (SN-2834)
 Assistant United States Attorney
 86 Chambers Street, Third Floor
 New York, NY 10007
 Telephone: (212) 637-2709

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

In re)	
)	
MAGNESIUM CORPORATION)	Case No. 01-14312
OF AMERICA,)	
)	
Debtor.)	
)	Chapter 7
)	(Jointly Administered)
In re)	
)	
RENCO METALS, INC.,)	Case No. 01-41311
)	
Debtor.)	
)	

**SECOND AMENDED PROOF OF CLAIM OF
 THE UNITED STATES OF AMERICA ON BEHALF OF
 THE UNITED STATES BUREAU OF LAND MANAGEMENT**

A. Preliminary Statement

1. This Second Amended Proof of Claim is filed by the United States of America (the "United States") at the request of the United States Department of the Interior, Bureau of Land Management ("BLM"). The Attorney General is authorized to make this Second Amended Proof of Claim on behalf of the United States.

2. This Second Amended Proof of Claim relates to the liability of debtors

Magnesium Corporation of America ("MagCorp") and Renco Metals, Inc. ("Metals") (collectively, "Debtors") for reclamation of federal lands resulting from MagCorp's mineral trespasses.

3. This Second Amended Proof of Claim supplements, but does not replace or revoke, prior Proofs of Claim filed by the United States on behalf of BLM against the Debtors.

B. Facts

4. In 1979, MagCorp's predecessor-in-interest began mining mineral material from Section 11, Township 2 North, Range 8 West ("Section 11") pursuant to a lease issued by the Utah Division of Oil, Gas and Mining ("UDOGM") (Mineral Lease No. 8779).

5. In 1990, MagCorp patented Section 11 and obtained fee simple title thereto.

6. In 1992, MagCorp expanded mining operations in Section 3, Township 2 North, Range 8 West ("Section 3"). See Annual Report of Mining Operations dated February 2, 1993, attached hereto as Exhibit A. Section 3 is public land administered by BLM and is not part of MagCorp's patent.

7. In 1993, MagCorp reported to UDOGM that it had mined approximately 100,000 tons of mineral material from Section 3 in 1992. See Exhibit A.

8. In 1994, MagCorp reported to UDOGM that it had mined approximately 100,000 tons of mineral material from Section 3 in 1993. See Annual Report of Mining Operations dated January 14, 1992 [sic], attached hereto as Exhibit B

9. In 1995, MagCorp reported to UDOGM that, in 1994, it had mined 120,000 tons of mineral material from Sections 33 and 34 of Township 3 North, Range 8 West ("Section 33" and "Section 34," respectively), both of which are public lands administered by BLM. See

Annual Report of Mining Operations dated January 12, 1995, attached hereto as Exhibit C.

10. In 1996, MagCorp reported to UDOGM that, in 1995, it had mined approximately 170,000 tons of mineral material from Section 33 and Section 4 of Township 2 North, Range 8 West, both of which are public lands administered by BLM. See Annual Report of Mining Operations dated January 25, 1996, attached hereto as Exhibit D.

11. In 1997, MagCorp reported to UDOGM that it had mined 129,998 tons of ore or mineral from Section 33 in 1996. See Annual Report of Mining Operations dated January 23, 1997, attached hereto as Exhibit D.

12. Between 1992 and 1997, MagCorp mined at least 619,998 tons of mineral material from public land without a permit from BLM. Had MagCorp obtained the requisite permits from BLM to mine this amount of mineral material, MagCorp would have been required to pay \$167,399.46 to BLM in royalties (\$.27 per ton (the royalty rate for mineral material) x 619,998 tons = \$167,399.46).

13. BLM did not discover MagCorp's trespasses described herein until September 2003, when UDOGM was conducting reclamation activities and queried whether BLM wanted UDOGM to reclaim the BLM land that had been mined by MagCorp.

14. MagCorp was a closely held corporation wholly owned by Metals and controlled by Metals and the owners of Metals. Because of significant transfers of assets to Metals and the owners of Metals, MagCorp was undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. Metals is liable for MagCorp's debts and obligations to the United States.

C. Claim for Trespass

15. The United States hereby asserts a general unsecured claim against Debtors for trespass in the amount of \$167,399.46, plus interest.

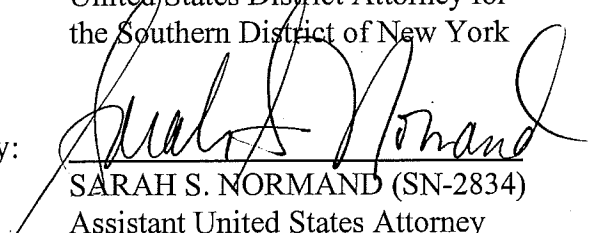
16. This Second Amended Proof of Claim reflects the known liability of Debtors to the United States on behalf of BLM for the mineral trespasses described herein. The United States reserves the right further to amend this claim to assert subsequently discovered liabilities.

17. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the Debtors by this or any other federal agency.

Date: April 6, 2004
New York, New York

DAVID N. KELLEY
United States District Attorney for
the Southern District of New York

By:


SARAH S. NORMAND (SN-2834)
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, NY 10007
Tel. (212) 637-2709

Date: April __, 2004
Salt Lake City, Utah

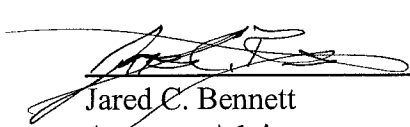

Jared C. Bennett
Attorney-Advisor
United States Department of the Interior
Office of the Solicitor
Suite 6201, Federal Building
125 South State Street
Salt Lake City, UT 84138
Tel. (801) 524-5677

EXHIBIT A

FORM MR-AR
(Revised 1/91)

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
Telephone: (801) 538-5340
Fax: (801) 359-3940

ANNUAL REPORT OF MINING OPERATIONS

The informational requirements of this form are based on provisions of the Mined Land Reclamation Act, Title 40-8, Utah Code Annotated 1953, as amended, and the General Rules as promulgated under the Utah Minerals Regulatory Program. An operator conducting mining operations under a Notice of Intention must file an annual operations and progress report (FORM MR-AR) with the Division.

I. GENERAL INFORMATION

1. Report Time Period: From (mo./yr.) 1-92 To (mo./yr.) 12-92
2. DOGM File Number: M / 045/008
3. Mine Name: Rowley Magnesium Facility
4. Mineral(s) Mined: Oolites
5. Legal Description (Location of Lands Affected):
1/4, 1/4, Section , Township , Range
1/4, 1/4, Section , Township , Range
1/4, 1/4, Section , Township , Range
6. Name of Operator or Company: Magnesium Corporation of America
7. Permanent Address: 238 North 2200 West
Salt Lake City, Utah 84116

8. Company Representative (or designated operator):

Name: Lee R. Brown
 Title: Vice President
 Address: 238 North 2200 West, Salt Lake City, Utah 84116
 Phone: 801-532-2043

☐ Please check if any of the above information has changed since previous year.

II. MINING AND RECLAMATION

1. Was the mine active during the past year? Yes ☒ No ☐
2. If active, how much ore or mineral was mined? 89,429 tons
3. How much new or additional acreage was affected during past year? 30 acres
4. Briefly describe any new or additional surface disturbances that occurred during the past year. This description should include the type of work performed, and volume of material moved.
Mining operation was moved to the NW corner of Section 3 T2N R8W.
25 to 30 acres of land were opened to surface mining (upper 3-6 feet).
Eolitic sand is screened and washed. Total volume of material moved
was approximately 100,000 tons.
5. How much acreage was reclaimed during past year? approximately 20 acres
6. Briefly describe the reclamation work performed during the past year. This description should include methods employed, and an evaluation of the results.
All areas were reclaimed using standard reclamation procedures.

7. What is the total disturbed acreage at years end? 25 to 30 acres
8. Briefly summarize mining and reclamation planned for the upcoming year.
As mineable oolites are depleted in present mining site, operations
will be moved north. Projected harvest for 1993 will approximate at
100,000 tons. Standard reclamation procedure will be adhered to.

NOTE: Section III., "Additional Information" applies only to large mining operations.

III. ADDITIONAL INFORMATION

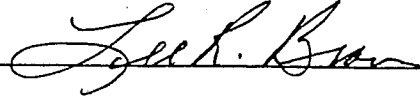
1. An updated surface facilities map should be attached if there have been significant changes since the previous map was submitted.
2. Any monitoring results or other reports that are required under the terms of the approved notice of intention should also be attached.

IV. SIGNATURE REQUIREMENT

I hereby certify that the foregoing is true and correct.

Name (Typed or Print): Lee R. Brown

Title of Operator: Vice President

Signature of Operator: 

Date: 2/2/93

jb
MR-AR

EXHIBIT B

FORM MR-AR
(Revised 12/93)

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
Telephone: (801) 538-5340
Fax: (801) 359-3940

RECEIVED

JAN 18 1994

DIVISION OF
OIL, GAS & MINING

ANNUAL REPORT OF MINING OPERATIONS

The informational requirements of this form are based on provisions of the Mined Land Reclamation Act, Title 40-8, Utah Code Annotated 1953, as amended, and the General Rules as promulgated under the Utah Minerals Regulatory Program. An operator conducting mining operations under a Notice of Intention must file an annual operations and progress report (FORM MR-AR) with the Division.

I. General Information

1. Report Time Period: From (mo./yr.) 1/93 To (mo./yr.) 12/93
 2. DOGM File Number (Mine No): M / 045/008
 3. Mine Name: Rowley Magnesium Facility
 4. Mineral(s) Mined (or permitted to mine): Oolites
 5. Type of mine ☒ Surface Mine or ☐ Underground Mine
 6. Legal Description (Location of Lands Affected):
1/4, 1/4, Section , Township , Range
1/4, 1/4, Section , Township , Range
1/4, 1/4, Section , Township , Range
 7. Name of Operator or Company: Magnesium Corporation of America
 8. Permanent Street Address : 238 North 2200 West
City, State, Zip: Salt Lake City, Utah 84116
Phone: (801) 532-1522
 9. Company Representative (or designated operator):
Name: Lee R. Brown
Title: Vice President
Business Address: 238 North 2200 West
City, State, Zip: Salt Lake City, Utah 84116
Phone: (801) 532-2043
- ☐ Please check if any of the above information has changed since previous year.

II. Mining and Reclamation

1. Was the mine active during the past year? Yes ☒ No ☐
2. If active, how much ore or mineral was mined? 90,972 tons

100251

3. How much additional acreage was disturbed during the past year? 20 acres
4. Briefly describe any new or additional surface disturbances that occurred during the past year. This description should include the type of work performed, and volume of material moved.

Mining operation is continuing in NW corner of Section 3 T2N R8W.
Approximately 20-25 acres of land was opened to surface mining (upper
3-6 feet). Oolitic sand is screened and washed. Total volume of
material moved was approximately 100,000 tons

5. How much acreage was reclaimed during the past year? Approximately 20 acres
6. Briefly describe the reclamation work performed during the past year. This description should include methods employed, and an evaluation of the results.

All areas were reclaimed using standard reclamation procedures.

7. What is the total disturbed acreage at years end? 45-50 acres
8. Briefly summarize any mining and/or reclamation plans for the upcoming year.

As mineable oolites are depleted in present mining site, operations
will be moved North. Projected harvest for 1994 will approximate
at 100,000 tons. Standard reclamation procedures will be adhered to.

NOTE: Section III., "Additional Information" applies only to large mining operations.

III. Additional Information

1. An updated surface facilities map should be attached if there have been significant changes since the previous map was submitted.
2. Any monitoring results or other reports that are required under the terms of the approved notice of intention should also be attached.

IV. Signature Requirement

I hereby certify that the foregoing is true and correct.

Name (Typed or Print):

Lee R. Brown

Title of Operator:

Vice President

Signature of Operator:

Lee R. Brown
1/14/92

Date:

EXHIBIT C

M10451008

FORM MR-AR
(Revised 12/93)

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
Telephone: (801) 538-5340
Fax: (801) 359-3940

RECEIVED

1995

ANNUAL REPORT OF MINING OPERATIONS

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I. General Information

1. Report Time Period: From (mo./yr.) 1/94 To (mo./yr.) 12/94
2. DOGM File Number (Mine No): M / 045 / 008
3. Mine Name: Rowley Magnesium Facility
4. Mineral(s) Mined (or permitted to mine): Oolites
5. Type of mine ☒ Surface Mine or ☐ Underground Mine
6. Legal Description (Location of Lands Affected):
1/4, 1/4, Section , Township , Range
1/4, 1/4, Section , Township , Range
1/4, 1/4, Section , Township , Range
7. Name of Operator or Company: Magnesium Corporation of America
8. Permanent Street Address : 238 North 2200 West
City, State, Zip: Salt Lake City, Utah 84116
Phone: (801) 532-1522
9. Company Representative (or designated operator):
Name: Lee R. Brown
Title: Vice President
Business Address: 238 North 2200 West
City, State, Zip: Salt Lake City, Utah 84116
Phone: (801) 532-1522

☐ Please check if any of the above information has changed since previous year.

II. Mining and Reclamation

1. Was the mine active during the past year? Yes ☒ No ☐
2. If active, how much ore or mineral was mined? 94,385 tons

100254

3. How much additional acreage was disturbed during the past year? 15-20 acres
4. Briefly describe any new or additional surface disturbances that occurred during the past year. This description should include the type of work performed, and volume of material moved.

Mining operation has moved into area of new claims. Claims are located in Sections
33 and 34 T3N R8W. 15 to 20 acres were opened to surface mining (upper 3 - 6 feet).
Oolitic sand is screened and washed. Total volume of material moved was 120,000 tons.

5. How much acreage was reclaimed during the past year? Approximately 10 - 15 acres.
6. Briefly describe the reclamation work performed during the past year. This description should include methods employed, and an evaluation of the results.

All areas were reclaimed using standard reclamation procedures.

7. What is the total disturbed acreage at years end? 60 - 65 acres.

8. Briefly summarize any mining and/or reclamation plans for the upcoming year.

As mineable oolites are depleted in present mining site, operations will move north.
Projected harvest for 1995 will approximate at 100,000 tons. Standard reclamation
procedures will be adhered to.

NOTE: Section III., "Additional Information" applies only to large mining operations.

III. Additional Information

1. An updated surface facilities map should be attached if there have been significant changes since the previous map was submitted.
2. Any monitoring results or other reports that are required under the terms of the approved notice of intention should also be attached.

IV. Signature Requirement

I hereby certify that the foregoing is true and correct.

Name (Typed or Print):

Lee R. Brown

Title of Operator:

Vice President

Signature of Operator:

Lee R. Brown

Date:

1/12/95

EXHIBIT D

FORM MR-AR
(Revised 12/93)

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
Telephone: (801) 538-5340
Fax: (801) 359-3940

ANNUAL REPORT OF MINING OPERATIONS

The informational requirements of this form are based on provisions of the Mined Land Reclamation Act, Title 40-8, Utah Code Annotated 1953, as amended, and the General Rules as Promulgated under the Utah Minerals Regulatory Program. An operator conducting mining operations under a Notice of Intention must file an annual operations and progress report (FORM MR-AR) with the Division.

I. General Information

1. Report Time Period: From (mo./yr.) 1/95 To (mo./yr.) 12/95
 2. DOGM File Number (Mine No.): M/045/008
 3. Min Name: Rowley Magnesium Facility
 4. Mineral(s) Mined (or permitted to mine): Oolites
 5. Type of mine ☒ Surface Mine or ☐ Underground Mine
 6. Legal Description (Location of Lands Affected):
1/4, 1/4, Section, Township, Range
1/4, 1/4, Section, Township, Range
1/4, 1/4, Section, Township, Range
 7. Name of Operator or Company: Magnesium Corporation of America
 8. Permanent Street Address: 238 North 2200 West
City, State, Zip: Salt Lake City, Utah 84116
Phone: (801) 532-1522
 9. Company Representative (or designated operator):
Name: Lee R. Brown
Title: Vice President
Business Address: 238 North 2200 West
City, State, Zip: Salt Lake City, Utah 84116
Phone: (801) 532-1522
- ☐ Please check if any of the above information has changed since previous year.

II. Mining and Reclamation

1. Was the mine active during the past year? Yes ☒ No ☐
2. If active, how much ore or mineral was mined? 133,728 tons

100257

3. How much additional acreage was disturbed during the past year? 34
4. Briefly describe any new or additional surface disturbances that occurred during the past year. This description should include the type of work performed, and volume of material moved.
Mining in 1995 occurred in Sections 33T3N R8W and Section 4T2N R8W.
14.0 acres were surface mined (upper 2-5 feet). Oolitic sand is screened
and washed. Total volume of material moved was about 170,000 tons.
5. How much acreage was reclaimed during the past year? Approximately 12 - 15 acres
6. Briefly describe the reclamation work performed during the past year. This description should include methods employed, and an evaluation of the results.
All areas were reclaimed using standard reclamation procedures.
7. What is the total disturbed acreage at years end? 35 acres
8. Briefly summarize any mining and/or reclamation for the upcoming year.
Operations are currently moving west by northwest in the SW quarter section
of Section 33. Projected harvest in 1996 is 150,000 tons. Standard reclamation
procedures will be adhered to.

NOTE: Section III., "Additional Information" applies only to large mining operations.

III. Additional Information

1. An updated surface facilities map should be attached if there have been significant changes since the previous map was submitted.
2. Any monitoring results or other reports that are required under the terms of the approved notice of intention should also be attached.

IV. Signature Requirement

I hereby certify that the foregoing is true and correct.

Name (Typed or Print): Lee R. Brown

Title of Operator: Vice President

Signature of Operator: *Lee R. Brown*

Date: 1/25/96

DOOLITTLE SAND MINED AREAS 1/95 THRU 12/95

SECTION 32

4206

SECTION 33
T 3 N R 8 W

SECTION 34

APPROXIMATE
DIRECTION OF
MINING JAN. 96

4217

SECTION 4
T 2 N

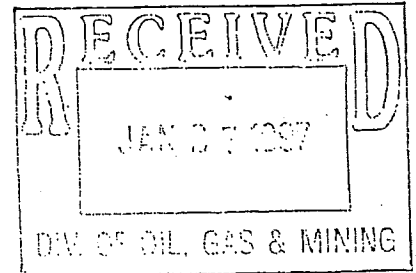
AREA MINED FOR DOOLITTES 14.0 ACRES
TOTAL DISTURBED AREA 34.0 ACRES

1" = 1000'

EXHIBIT E

FORM MR-AR
(Revised 6/96)

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
1594 West North Temple Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801
Telephone: (801) 538-5291
Fax: (801) 359-3940



ANNUAL REPORT OF MINING OPERATIONS

The informational requirements of this form are based on provisions of the Mined Land Reclamation Act, Title 40-8, Utah Code Annotated 1953, as amended, and the General Rules as promulgated under the Utah Minerals Regulatory Program. An operator conducting mining operations under a Notice of Intention must file an annual operations and progress report (FORM MR-AR) with the Division.

I. General Information

1. Report Time Period: From (mo./yr.) 1/96 To (mo./yr.) 12/96
2. DOGM File Number (Mine No): M / 045 / 008
3. Mine Name: Rowley Magnesium Facility
4. Mineral(s) Mined (or permitted to mine): Oolites
5. Type of mine ☒ Surface Mine or ☐ Underground Mine
6. Legal Description (Location of Lands Affected):
NW 1/4, SW 1/4, Section 33, Township 3N, Range 8W
1/4, 1/4, Section , Township , Range
1/4, 1/4, Section , Township , Range
7. Name of Operator or Company: Magnesium Corporation of America
8. Permanent Street Address: 238 North 2200 West
City, State, Zip: Salt Lake City, Utah 84116
Phone: (801) 532-2043
9. Company Representative (or designated operator):
Name: Lee R. Brown
Title: Vice President
Business Address: 238 North 2200 West
City, State, Zip: Salt Lake City, Utah 84116
Phone: (801) 532-2043

☐ Please check if any of the above information has changed since previous year.

II. Mining and Reclamation

1. Was the mine active during the past year? Yes ☒ No ☐
2. If active, how much ore or mineral was mined? 129,998 tons

3. How much **additional acreage** was disturbed during the past year? about 30 acres.
4. Briefly describe any new or additional surface disturbances that occurred during the past year. This description should include the type of work performed, and volume of material moved.
Mining in 1996 in Section 33, NW 1/4, SW 1/4, in claims: 33-4,
33-3, 33-1
5. How much acreage was **reclaimed** during the past year? about 15 acres
6. Briefly describe the reclamation work performed during the past year. This description should include methods employed, and an evaluation of the results.
Used standard procedures.
7. What is the **total disturbed acreage** at years end? about 65 acres.
8. Briefly summarize any mining and/or reclamation plans for the upcoming year. There will be a small amount taken from Sec 32 - alternative sources are being considered. Projected for an entire years operation would be about 120,000 tons - standard reclamation procedures.

NOTE: Section III., "Additional Information" applies only to large mining operations.

III. Additional Information

1. An updated surface facilities map should be attached if there have been significant changes since the previous map was submitted.
2. Any monitoring results or other reports that are required under the terms of the approved notice of intention should also be attached.

IV. Signature Requirement

I hereby certify that the foregoing is true and correct.

Name (Typed or Print):

Lee R. Brown

Title of Operator:

Vice President

Signature of Operator:

Lee R. Brown

Date:

1/23/97

五

SEC 33 SW

112-41-30 W

33-2

48-57'-00" N
112°-45'-00" W

五

1995

33-4

2-44

SEC 32 SW

T2N R8W

55233

1995 Report

40-56-30N
112-45-30W

40-56' 30" N
12-45' 00" W

7-1-19

Exhibit G

ORIGINAL

JAMES B. COMEY
United States Attorney for the
Southern District of New York
Attorney for the United States of America
By: Edward Chang (EC-8218)
Assistant United States Attorney
33 Whitehall Street -- 8th floor
New York, NY 10004
Telephone: (718) 422-5628

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	x	Chapter 11
In re	:	
	:	
MAGNESIUM CORPORATION	:	Case No. 01-14312 (REG)
OF AMERICA,	:	
	:	
Debtor.	:	
-----	x	

**REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSES
OF THE UNITED STATES BUREAU OF LAND MANAGEMENT**

A. Preliminary Statement

1. This request for payment of administrative expenses ("Request") is filed by the United States at the request of the United States Bureau of Land Management ("BLM"). The Attorney General is authorized to make this Request on behalf of the United States. This Request relates to:

(a) the liability of debtor Magnesium Corporation of America ("MagCorp") and debtor Renco Metals, Inc. ("Metals"; collectively, "Debtors") for reclamation of federal lands required pursuant to a right-of-way grant, serial number U-54897, and

(b) the liability of the Debtors for unpaid rent on ROW U-54897.

FILED IN DISTRICT

U.S. BANKRUPTCY COURT

NEW YORK

B. Facts

2. In 1986, Amax Magnesium, Inc. ("Amax"), a predecessor in interest to MagCorp, received from BLM a right-of-way grant ("ROW"), serial number U-54897, to construct a canal and evaporative ponds ("Knolls Facility") on property owned by the United States and managed by the BLM.

3. ROW U-54897 requires MagCorp to pay rent in advance on an annual basis. By letter dated January 29, 2002, MagCorp was informed that rent was past due for calendar year 2002 in the amount of \$68,969.96. That amount remains due and owing.

4. ROW U-54897 further provides: "Prior to abandonment of the grant, the holder shall contact the Authorized Officer to arrange a joint inspection of the grant area. The inspection will be held to agree on an acceptable abandonment and rehabilitation plan. The Authorized Officer must approve the plan in writing prior to the holder commencing any abandonment and rehabilitation activities."

5. ROW U-54897 covers an area of 53,448.48 acres. Facilities constructed on the site include approximately 30 miles of ditches and canals, 35 miles of roads, dikes surrounding over 16,000 acres of evaporation ponds, a brine storage reservoir originally designed to hold 250 million gallons of brine with approximately 8% magnesium, five separate pumping stations on metal structures, a combined shop and office building, two above-ground fuel storage tanks with underground pipelines going to four of the five pumps, and a number of gates and structures designed to control the flow of brine.

6. From 1987 to 2000, brine was pumped into the evaporation ponds and concentrated through solar evaporation to a final product containing approximately 8%

magnesium. During this process, various salts (primarily sodium chloride) were deposited into the ponds.

7. The Knolls Facility is located adjacent to Interstate 15 on the south and is bounded on the north by a bombing range managed by the United States Air Force. Much of the area included within the facility consists of mud flats that, prior to the construction of the facility, offered limited public access. The mud flats are saturated with brine, and generally will not support vehicular travel when the surface is wet.

8. Now, access to the facility is restricted by three locked gates. However, the public can and has been able to drive around these gates. The roads within the facility have no barriers to prevent anyone driving on to the areas of the mud flats or into the open ditches. These publicly accessible roads make it possible for the public to access the mud flat area more than 6 miles away from assistance. These roads also potentially provide access to the Air Force bombing range, the elevated metal structures supporting the pumps, and the pond areas. Excavations have been made in salt deposited in the solar pond areas, and the south brine storage reservoir has been freshly excavated leaving an irregular surface.

9. MagCorp is a closely held corporation owned wholly by Metals and controlled by Metals and the owners of Metals. Because of significant transfers of assets to Metals and the owners of Metals, MagCorp is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. Metals is liable for MagCorp's debts and obligations to the United States.

C. Claim for Unpaid Rent

10. The United States hereby requests payment of the unpaid rent as described in paragraph 3 as an administrative expense.

D. Claim for Reclamation

11. In its present condition, the Knolls Facility presents a threat to public health and safety. Such threats include, but are not limited to, open ditches, elevated pump structures with compromised safety railings, roads without engineered barriers to keep one from driving into dangerous conditions, excavated pond areas with unstable conditions, and abandoned equipment. Although the debtors have placed a sign on the main access gate indicating that the area is dangerous and that access is restricted to authorized personnel, the gates do not adequately restrict access to the facility.

12. The reclamation requirements for ROW U-54897 include, without limitation, reclamation relating to ditches and berms developed during ditch construction, exterior dikes of the evaporation ponds, interior dikes of the evaporation ponds, brine storage ponds, removal of structural facilities, roads, and reestablishment of cadastral survey monuments. BLM's cost estimate for the reclamation is \$6,051,640.

13. Certain statutory and regulatory obligations of the Debtors, including the Debtors' reclamation obligations under ROW U-54897, are mandatory injunctive obligations that are not dischargeable under the Bankruptcy Code. The Debtors, including any successor to MagCorp or Metals, must comply with such mandatory injunctive obligations.

14. In the alternative, the United States asserts on a protective basis that the cost of the Debtors' compliance with their liabilities for injunctive relief as set forth above is an

administrative expense of the estate. See United States v. LTV Corp. (In re Chateaugay Corp.), 944 F.2d 997, 1009-10 (2d Cir. 1991) ("[R]esponse costs for post-petition remedial action qualify as administrative expenses."). This Request is filed in protective fashion to protect the United States' rights with respect to mandatory injunctive obligations of the Debtors, and the United States reserves the right to take future actions to enforce any such obligations. Nothing in this Request constitutes an election of remedies or a waiver of any rights of the United States.

E. Conclusion


15. This Request reflects the known liability of the Debtors to the United States on behalf of the BLM. The United States reserves the right further to amend this Request to assert subsequently discovered liabilities. This Request is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the Debtors by this or any other federal agency.

Dated: February 18, 2003
New York, NY

Respectfully submitted,

JAMES B. COMEY
United States Attorney for the
Southern District of New York

By:


EDWARD CHANG (EC-8218)
Assistant United States Attorney
33 Whitehall Street -- 8th floor
New York, New York 10004
Tel. (718) 422-5628